

Volume 4

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE EDWARD M. CHEN, JUDGE

IN RE TESLA, INC. SECURITIES  
LITIGATION.

)

) No. 18-cv-04865-EMC

)

San Francisco, California  
Monday, January 23, 2023

**TRANSCRIPT OF TRIAL PROCEEDINGS**

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(Appearances continued, next page)

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Monday, January 23, 2023

8:16 a.m.

P R O C E E D I N G S

(The following proceedings were held outside of the presence of the Jury)

**THE COURTROOM DEPUTY:** All rise. Court is now in session, the Honorable Edward M. Chen is presiding.

**THE COURT:** Good morning. Have a seat everyone.

**THE COURTROOM DEPUTY:** Court is calling the case In Regarding Tesla Securities Litigation, Case No. 18-4865. Counsel, please state your appearances for the record, beginning with plaintiff.

**MR. PORRITT:** Good morning, Your Honor. Nicholas Porritt with Levi & Kosinsky on behalf of the plaintiff.

**THE COURT:** Good morning, Mr. Porritt.

**MR. SPIRO:** Good morning, Your Honor. Alex Spiro from Quinn Emanuel on behalf of the defendants.

**THE COURT:** Good morning, Mr. Spiro.

**MR. SPIRO:** Good morning.

**THE COURT:** So let's talk about Exhibit 80 that I received late, I think, last evening. The plaintiff's trial brief and just now some additional materials, looks like regarding correspondence with the SEC?

**MS. TRIPODI:** Yes, Your Honor that's correct. I apologize, Your Honor, for the late filing. We were waiting for correspondence from the SEC that we hoped to be able to

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1 provide you yesterday but just received the secure files from  
2 them this morning.

3 **THE COURT:** All right. So addressing first the  
4 question of authenticity, is there any dispute that Mr. Pees  
5 from Akin Gump represented the Saudi Arabia Public Investment  
6 Fund?

7 **MR. SPIRO:** I'm certainly not conceding that. I have  
8 no idea, I haven't had a chance to cross-examine him or take  
9 testimony from him or anybody at the PIF.

10 **THE COURT:** Do you have any reason to believe that  
11 Mr. Pees does not represent, did not represent PIF?

12 **MR. SPIRO:** No, Your Honor.

13 **THE COURT:** So the chain of custody would go from PIF  
14 to their lawyer at Akin Gump, from their lawyer to the SEC and  
15 then from the SEC to plaintiffs' counsel. That's the sequence.  
16 Correct?

17 **MS. TRIPODI:** Your Honor, that's correct. And we've  
18 also provided the email from the SEC to Mr. Al-Jarboa,  
19 requesting information and a conversation.

20 **THE COURT:** Is there any break in that chain that you  
21 would like to focus on?

22 **MR. SPIRO:** I have no idea if there's a break in that  
23 chain. I just got these documents today. What I can tell the  
24 Court is that the SEC was certainly not comfortable enough to  
25 use these minutes in their case. So I know -- I can tell the

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1 Court that I know for sure. What, what -- the exact chain of  
2 custody I haven't been as focused on because of the other  
3 strictures of Federal Rule of Evidence 901.

4 **THE COURT:** All right. Let's get to the -- assuming  
5 for a moment that there's sufficient evidence for the Court to  
6 find authenticity, then we get to the hearsay problem.

7 **MR. SPIRO:** Yes.

8 **THE COURT:** And so I want to get your response. The  
9 plaintiffs have suggested that although there's some  
10 differences, there is overall corroborative evidence suggesting  
11 that the meeting took place, the folks there who indicated that  
12 the meeting did take place at that point. That they did  
13 observe one or more person from PIF taking notes, appear to be  
14 taking notes, and that many of the subject matters that are  
15 identified in Exhibit 80 were indeed discussed. I understand  
16 there's going to be some conflict as to the substance of it and  
17 I know that's your objection. But the level of corroboration I  
18 think under 807 doesn't require complete concordance with  
19 everything that is said. But I think if there is enough  
20 indicator that it seems to be what it purports to be, that it's  
21 of a meeting that took place and what -- I would like to hear  
22 your response.

23 **MR. SPIRO:** Sure. Just so the record is clear on the  
24 901 issue before we jump to this, there is ample case law in  
25 California and the various districts that even an affidavit

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1 from a lawyer saying: This is what I produced, this is correct,  
2 this is accurate is not sufficient. The law is clear as day on  
3 that. And --

4 **THE COURT:** And why isn't it?

5 **MR. SPIRO:** Because the person who's transmitting it  
6 themselves doesn't know that it is what it purports to be.  
7 Meaning -- this is why you see in the SEC's response here,  
8 they're talking about Form 1626. What Form 1662 does in an SEC  
9 investigation is it requires the proponent of the document to  
10 swear that it is fake, not altered, and done at the same time,  
11 or they don't even count it towards their investigation. Which  
12 is what happened here, in fact.

13 But what the case law says -- and you can look at *Seoul*  
14 *Semiconductor, L.A. Printex Indus.* but *Sullivan versus Costco*  
15 *Wholesale Corp.* --

16 **THE COURT:** Give me the cite.

17 **MR. SPIRO:** 2018 Westlaw, 4057447, at 6, Eastern  
18 District --

19 **THE COURT:** I'm sorry, 405 --

20 **MR. SPIRO:** 7447.

21 **THE COURT:** At 6?

22 **MR. SPIRO:** Yes. Eastern District of California.  
23 Says that again, counsel's -- even their affidavit, a sworn --  
24 so if this Akin Gump lawyer had hypothetically done a sworn  
25 statement attesting to the chain of custody, that would be

1 insufficient, because he doesn't actually know the origin.

2 So you see, chain of custody almost misses the mark  
3 completely. Because we firmly believe that these are not  
4 genuine notes.

5 **THE COURT:** Why wouldn't that be true for any lawyer  
6 response? It always comes through a lawyer, if somebody's  
7 represented, to Rule 34 requests. You request production of  
8 documents and the lawyers go through it and then they come to  
9 your office with a big box and say "Here it is."

10 **MR. SPIRO:** Right. Well, it's true that the document  
11 is passed on by the lawyer. But what the lawyer does not know  
12 is if the document, itself, is authentic. And the question  
13 that 901 is focused on, if you look at the advisory opinion --

14 **THE COURT:** So authenticity could be raised every  
15 time -- even when a party produces through their lawyer in  
16 response to either a subpoena or a Rule 34 request, there is  
17 embedded in there an inherent and serious authenticity problem,  
18 or question?

19 **MR. SPIRO:** I don't know that I can say in every  
20 single case, but --

21 **THE COURT:** Why wouldn't it? Under your logic that  
22 the lawyer didn't swear that -- you know, or get a sworn  
23 affidavit from his or her or their client, that this is an  
24 authentic record in response, say, to Request No. 36, you know  
25 --

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1           **MR. SPIRO:** Sure. Sure. So there are some documents,  
2 right, that you see in cases very often like emails that have  
3 other indicia, right, timestamps, metadata, things that are  
4 forwarded. Recipients, things like that.

5           A single standalone -- what I will tell the Court with  
6 great conviction is that a single standalone Word document, so  
7 somebody produces in a case on a typed one page, or handwritten  
8 notes on one page, that goes to a lawyer. That gets produced a  
9 court case? Under no circumstances, in my view, could that  
10 ever be authenticated without the person who took the notes  
11 saying "These are real notes. These are not fake notes; these  
12 were made by somebody actually at the meeting."

13           You have to remember, we don't know who took the notes,  
14 when they were taken, if they're really what they purport to  
15 be, what the purpose of the notes were. Were they done in the  
16 regular activity?

17           And I would submit to the Court the circumstances of this  
18 are awfully suspicious, too. Because, of course, the SEC wants  
19 to speak to these folks. They live overseas, and the SEC has  
20 limited ability to force them to come in.

21           If you look at the email chain I've only had a moment to  
22 look at, you can see the SEC lawyers basically saying: Listen,  
23 this is voluntary. They understand that the PIF can resist a  
24 formal subpoena process, just like they did in this case. And  
25 so what they're sort of saying is: Well, give us what you've

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1 got.

2 In that circumstance, the PIF has every possible reason to  
3 want to pass in a document that is -- makes the SEC not want to  
4 chase them through time. Okay. And as much as they can make  
5 the SEC happy, they know that the SEC is going to let -- be  
6 bothering them less.

7 And so that's my response to that issue. I mean, the  
8 document here doesn't even have the email from the PIF to us.  
9 It doesn't have the date the notes were taken. Doesn't have  
10 who took the notes. Doesn't have anything.

11 **THE COURT:** What would -- maybe you can clarify for  
12 me. What would be the incentive of PIF to fabricate a document  
13 such as Exhibit 80, to then forward that to the SEC?

14 **MR. SPIRO:** Their incentive would be that: If we give  
15 the SEC what they want, they're not going to bother us. Which  
16 is the reason the SEC has formed 1662 to begin with. Because  
17 the SEC is well aware that people produce fabricated notes all  
18 the time.

19 It doesn't need to be a full-on fabrication either,  
20 Your Honor.

21 **THE COURT:** So in other words, it's just to get the  
22 SEC off their back?

23 **MR. SPIRO:** Totally. Of course.

24 **THE COURT:** And why -- is this the only document that  
25 was produced?

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1           **MR. SPIRO:** I don't -- we -- I haven't had a chance to  
2 examine any of this. That's --

3           **THE COURT:** I'm not sure I understand why PIF would go  
4 through -- and why would it -- why would it tilt the testimony,  
5 fabricate the testimony and make inaccurate these notes -- make  
6 up notes, just to get the SEC off its back? I'm not sure I  
7 understand.

8           **MR. SPIRO:** Well, because that happens every day. I  
9 mean, and also, we're using the word "fabricate" as if this is,  
10 you know, a bit -- like some thriller. All I'm saying is that  
11 if the notes were taken, and then edited, altered, if there was  
12 an original version then a later version, then a late -- we  
13 don't know any of that, obviously, either.

14           And our view of the case, our theory of the case, frankly,  
15 is that the PIF did change their tune afterwards. There's  
16 ample evidence in this case that the PIF changed what they were  
17 saying afterwards, because they wanted to re-trade the deal,  
18 because they wanted to distance themselves, because of the leak  
19 in the media. For a variety of circumstances.

20           And if you give the SEC a document that purports to be  
21 their narrative, of course the SEC's going to be happy with  
22 you, and of course the SEC's going to be less likely -- but I  
23 don't need to prove -- I mean, this is ultimately -- and I  
24 don't even have to get -- I'll eventually move to the hearsay  
25 question, but we don't even --

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1           **THE COURT:** Why don't you address that question right  
2 now. We've got limited time. I want to know your response to  
3 why there isn't sufficient corroboration for 807 purposes.

4           **MR. SPIRO:** Yeah. So, just the final point, I think  
5 it's a hearsay point, too, so it works for both. One is these  
6 are not the original notes taken at the meeting, even,  
7 Your Honor. The testimony is that the notes were handwritten  
8 at the meeting. If there were any notes. Again, we don't know  
9 that the witness's observation of a person at the meeting is  
10 even note-taking and not doodling. And we don't even know who  
11 made those notes, and we don't even know if it's the same  
12 person who made these notes.

13           And we -- we don't believe that the original notes were  
14 even in English. We don't have any reason to believe that they  
15 were in English. In fact, we have every reason to believe they  
16 were not in English.

17           So now you're talking about maybe there were hand- --  
18 maybe -- 20 percent chance, who knows -- that there were  
19 handwritten notes taken at this meeting. In another language.  
20 At some later point, maybe the same notes were then given to  
21 another person or maybe there were many iterations of this, or  
22 maybe lawyers edited this, or maybe this is literally made out  
23 of whole cloth. And --

24           **THE COURT:** What about the contents? The -- the point  
25 that the topics were who was there, et cetera, et cetera, seems

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1 to be corroborated.

2 **MR. SPIRO:** Yeah. The reason we are having this  
3 conversation is because the notes are obviously completely  
4 different from the live witnesses that are testifying here  
5 today. Meaning some bare-bones similarities are exactly what  
6 an improper document would have. If the document said at the  
7 meeting it was, you know, Mickey Mouse, obviously that wouldn't  
8 be a very good attempt at a person to bring in a document that  
9 should not be relevant.

10 But what the indicia of reliability and the advisory  
11 opinions and all the case law talk about is the kind of  
12 trustworthiness in a document that is so pristine and so  
13 bulletproof that a court can be comfortable that in a matter of  
14 this importance, the person wouldn't have to be subject to  
15 cross-examination.

16 It's incredible amounts of detail, incredible amounts of  
17 precision that are required. In this case, we have --

18 **THE COURT:** What case stands for that proposition,  
19 that you need to have, quote, an incredible amount of specific  
20 corroboration?

21 **MR. SPIRO:** Yeah, so let me just pull this up. Hold  
22 on a second. So I -- we can give the Court -- again, the  
23 submission came in last night after the deadline. The Court  
24 had told counsel to turn these documents in to us right after  
25 court. We're here, now, on the morning of.

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1 And if the declarant's truthfulness is so clear from the  
2 surrounding circumstances that the test of cross-examine --  
3 cross-examination would be of, quote, "marginal utility."  
4 Marginal --

5 **THE COURT:** What case are you quoting from?

6 **MR. SPIRO:** Central District of California again,  
7 *Fudge versus Broomfield*.

8 **THE COURT:** What's the cite?

9 **MR. SPIRO:** 2022 Westlaw, 2101899 at 1. It's a 2022  
10 case. And it also says the rule was designed for exceptional  
11 circumstances.

12 **THE COURT:** All right. Let me hear your response.

13 **MR. SPIRO:** And, and, again, that case goes on, and it  
14 cites the Ninth Circuit case of *Sanchez* where, even though the  
15 declarants -- they're referring to *San* -- even though the  
16 declarants in that case were subject to the penalty of perjury,  
17 the statements were videotaped, there still was not sufficient  
18 rights of cross-examination to view the declarants' demeanor.  
19 Right? So that had every possible thing that one could want,  
20 one would suppose.

21 This exception is not something to be used in -- other  
22 than rarely, and in the most exceptional circumstances. As all  
23 of the cases in the Central District of California state.  
24 Because of the issue of cross-examination. This is a fraud  
25 case. The defendant has rights. The defendant tried to get

1 this witness here.

2 **THE COURT:** All right. Let me hear --

3 **MS. TRIPODI:** Your Honor --

4 **THE COURT:** Is this going to be brought up within the  
5 first 90-minute session?

6 **MR. PORRITT:** Quite possibly. We can defer. We can  
7 work around --

8 **THE COURT:** I think you should work around so I have a  
9 chance to look at these cases, but I want to get your response  
10 to Mr. Spiro's.

11 **MS. TRIPODI:** Sure. Your Honor, just a couple of  
12 brief remarks. Under the general provision of 901(a), we need  
13 evidence sufficient to support a finding that the matter in  
14 question -- the PIF notes, Exhibit 80 -- are what they say, the  
15 proponent, we say they are. We believe in providing this chain  
16 of custody, the correspondence from the SEC, to making the  
17 request to the Saudi PIF.

18 **THE COURT:** What about we don't know what these notes  
19 are, whether they were taken in a different language, when they  
20 were transcribed or when they were actually taken, all the  
21 things that happened before it got to there at the Akin Gump  
22 lawyer.

23 **MS. TRIPODI:** Understood, Your Honor. We don't know  
24 what language they were taken in, but we do have corroborating  
25 evidence from -- and it was not handwritten notes. The

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1 testimony from Mr. Ahuja and Mr. Teller at the PIF meeting said  
2 that one of the members of the PIF -- they believed it was Naif  
3 al Mogren -- was taking notes on a computer. I don't have  
4 clarity as to whether that was in English or in a different  
5 language.

6 But what we do know was that those notes were presented  
7 from the Saudi PIF to then the lawyer, Bob Pees. Just a couple  
8 of points, Your Honor, --

9 (Document handed up to the Court)

10 **MS. TRIPODI:** -- regarding the hearsay exception.  
11 Mr. Spiro has made the argument that the PIF wanted to get the  
12 SEC off their back. For the record, I do just want to point  
13 out that the PIF was not under investigation for violation of  
14 federal securities laws. And if the PIF wanted to get the SEC  
15 off their back, they could have easily corroborated Mr. Musk's  
16 story so there were two stories that were the same.

17 The other thing I want to point out from the minutes with  
18 respect to the corroboration, my colleague has said that the  
19 notes from the PIF are entirely different than what we have  
20 said went on at the meeting. That is not true, Your Honor.

21 The one point on these notes that they are taking issue  
22 with is the final bullet point wherein Yasir says "I would like  
23 to listen to your plan, Elon, and what are the financial  
24 calculations to take it private in the next week," which, that  
25 statement was corroborated by Deepak Ahuja at his deposition.

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1 But then the final statement is "If I did not receive  
2 anything, I will call you," indicating that Yasir was waiting  
3 to receive something from Elon prior to making any decision.

4 The other points in these minutes, including Yasir saying  
5 (As read):

6 "There's just one thing is SVF, in PIF we  
7 are independent and I am the one calling the  
8 shots in the PIF."

9 Mr. Spiro, in his opening statement, told the jury that  
10 Yasir gave Elon at this meeting guarantees that he was the  
11 decision-maker. That same statement is in these notes.

12 **THE COURT:** Do you have a comment on Mr. Spiro's  
13 citation of the *Fudge* case that says you need a -- I don't know  
14 if the words were "an incredible amount" of specific  
15 corroboration, so, so corroborative that cross-examination  
16 would be pretty much useless?

17 **MS. TRIPODI:** Your Honor, I don't have a comment right  
18 now, but I will review the case very quickly and can provide a  
19 comment.

20 **MR. SPIRO:** Just very briefly, Your Honor. I want to  
21 just point out a few other quick things.

22 One is in the -- in the bellwether exhibits when we dealt  
23 with this long ago, the Court said that this would have to be  
24 authenticated at trial, and that a foundation would have to be  
25 laid. That was the Court's indication that we --

1           **THE COURT:** That didn't necessarily rule out 901.

2           **MR. SPIRO:** Um, it --

3           **THE COURT:** I just noted it had to be authenticated,  
4 obviously, some way.

5           **MR. SPIRO:** Well, and that a foundation had to be  
6 laid.

7           **THE COURT:** Well, a foundation under 901. What's your  
8 next point?

9           **MR. SPIRO:** My next point is even in the sentence that  
10 they -- "If I did not receive anything," right, even the  
11 sentence that my adversary just read that's in the PIF notes is  
12 written in a tense that would lead to an hour of  
13 cross-examination. Because these notes were not done  
14 contemporaneously. It's obvious, even from the tenses of some  
15 of the statements in this.

16           Third, I passed up a transcript to Your Honor. My  
17 adversary misspoke --

18           **THE COURT:** Yes. Notes were taken in notebooks, not  
19 on computers, is the testimony.

20           **MS. TRIPODI:** My apologies, Your Honor.

21           **MR. SPIRO:** So again, that's a major difference. And  
22 the Court then knows if that is to be accepted as sworn  
23 testimony and true, that these notes could not have been the  
24 notes that were taken, nor do we have the original notes, nor  
25 do we know how this is different than the original notes.

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1 And finally, I would just say the reason we're going back  
2 and forth on this is we're talking about arguably the most  
3 critical document in this case, the most contested exhibit in  
4 the case. And we have -- we just have questions of  
5 reliability, questions of foundation, and questions of hearsay.

6 So when you -- when you combine an issue of authentication  
7 that is this serious, and an issue of hearsay that to -- to us  
8 is so, so clear, you have a risk of manifest prejudice. We  
9 don't have a right to cross-examine. And we strongly object to  
10 this exhibit.

11 **THE COURT:** All right. So this issue will not be  
12 brought up in the first 90 minutes until I have a chance to  
13 look at the case law.

14 **MS. TRIPODI:** Okay.

15 **THE COURT:** Okay?

16 **MS. TRIPODI:** Your Honor, may I make one final  
17 comment?

18 **THE COURT:** Quickly.

19 **MS. TRIPODI:** I just want to point out that in opening  
20 argument, the issue here really is that plaintiffs have no view  
21 of what happened, or we can't present the jury with what  
22 happened from the PIF side --

23 **THE COURT:** I understand that. This is your only  
24 evidence because --

25 **MS. TRIPODI:** And counsel has already said to the

1 jury: Everyone in the room will tell you that that's what  
2 happened. Elon's version of the story, Deepak and Teller.

3 That's all, Your Honor.

4 **THE COURT:** I understand. I understand.

5 **MS. TRIPODI:** Thank you.

6 **THE COURT:** Thank you.

7 Let's get started. Let's bring the jury in.

8 I have a request. Because of the stress on our wifi  
9 system -- that's what interfered, we believe, with the realtime  
10 last week -- that if you would turn off your court wifi and  
11 rely on your cellular data, the less devices we have on that.

12 And I'm going to ask anybody in the audience, you should  
13 not have your phone on in any event. So please turn off your  
14 phone, and certainly turn off any wifi access, because that's  
15 over-taxing our system and interfering with our ability to get  
16 realtime reportage. So, thank you.

17 (The following proceedings were held in the presence of  
18 the Jury)

19 **THE COURTROOM DEPUTY:** All rise for the jury.

20 **THE COURT:** All right, have a seat. Thank you.

21 Good morning, members of the jury. Good morning, everyone  
22 else. I hope had you a good weekend. Especially you  
23 Forty-Niner fans. I see some happy faces out there.

24 So, as you will recall, Mr. Musk was on the stand on  
25 examination by Mr. Porritt. So we are going to pick up right

**MUSK - DIRECT / PORRITT**

1 where we left off on Friday.

2 So, Counsel, you may recommence.

3 **ELON MUSK, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN**

4 **DIRECT EXAMINATION, RESUMED**

5 **BY MR. PORRITT**

6 **Q** Good morning, Mr. Musk.

7 **A** Good morning.

8 **Q** I hope you had a good weekend.

9 **A** Thank you.

10 **Q** Now, you've had some interactions with the Saudi Arabia  
11 Public Investment Fund, isn't that correct?

12 **A** Yeah. Yes.

13 **Q** And before July, 2018, a meeting we'll get to in a moment,  
14 you had had some prior meetings with representatives of the  
15 PIF. Isn't that correct?

16 **A** Yes.

17 **Q** And those meetings were about Tesla as well as some of  
18 your other companies, is that correct?

19 **A** Really, almost entirely about Tesla.

20 **Q** But a little bit about AI as well, isn't that correct?

21 **A** Very little but -- almost all about Tesla.

22 **Q** But prior to July of 2018, you had no intention of  
23 going -- of using PIF to finance any going-private transaction,  
24 isn't that correct.

25 **A** Prior to 2018?

## MUSK - DIRECT / PORRITT

1 Q To July, 2018.

2 A We had had discussions about taking Tesla private before,  
3 before July, 2018.

4 Q Okay. But you had decided that you did not want to  
5 proceed with the PIF, correct? At that point.

6 A Are you talking about July?

7 Q Prior to July, 2018.

8 A Correct.

9 Q And then on July 31, 2018 you met with representatives of  
10 the PIF at the Tesla Fremont factory, is that correct?

11 A That's correct.

12 Q And you met with Yasir Al-Rumayyan?

13 A Yes.

14 Q And a couple of other representatives from PIF, correct?

15 A Yes.

16 Q Okay. And one of those representatives took notes of the  
17 meeting, correct?

18 A I did not see anyone take notes.

19 Q Did one of the PIF representatives have a tablet or lap --  
20 computer with them?

21 A I -- I -- I don't -- I don't think so. Like I said, I do  
22 not recall anyone taking notes. Electronic or otherwise.

23 Q And you were there with Sam Teller, correct?

24 A With Sam Teller, and Deepak Ahuja.

25 Q Okay. Mr. Ahuja joined later in the meeting, correct?

## MUSK - DIRECT / PORRITT

1     **A**     He -- he joined almost as soon as the meeting started. It  
2     was -- he was there, I think, almost the entire time.

3     **Q**     No one from Tesla took notes in this meeting, correct?

4     **A**     Sorry, my back is hurting. Sorry.

5            I -- I did not take notes. I cannot speak for Mr. Ahuja  
6     or Mr. Teller.

7     **Q**     Have you seen any notes taken at that meeting by  
8     Mr. Teller or Mr. Ahuja, since 2018?

9     **A**     No.

10    **Q**     Okay.

11    **A**     Well, you mean notes of the meeting.

12    **Q**     Yes.

13    **A**     I don't believe so.

14    **Q**     And the meeting lasted about 30 minutes, correct?

15    **A**     I thought it lasted a bit longer than that. It may be as  
16    much as an hour, but -- between 30 minutes and an hour.

17    **Q**     And at the meeting, you discussed a potential go-private  
18    with Tesla, correct?

19    **A**     Correct.

20    **Q**     And you also discussed Tesla production goals?

21    **A**     I think we -- we may have talked about some long-term  
22    goals.

23    **Q**     Okay.

24    **A**     Yes.

25    **Q**     And you discussed solar projects in Saudi Arabia?

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1     **A**     Briefly, yes.

2     **Q**     And the PIF discussed working together with Tesla in a  
3     confidential manner to explore a potential transaction that  
4     would take Tesla private.  Correct?

5     **A**     I don't recall them saying "confidential."  I don't think  
6     they did say that.  But the -- the meeting was fundamentally  
7     about taking Tesla private.

8     **Q**     And the potential transaction to take Tesla private,  
9     correct?

10    **A**     I mean, they unequiv- -- the -- the PIF unequivocally  
11    wanted to take Tesla private.

12    **Q**     And that would require -- at that point you owned  
13    20 percent of Tesla, is that correct?  Approximately?

14    **A**     I think, actually, it was more than that.  I think, maybe  
15    with options and whatnot, maybe closer to 25 percent.

16    **Q**     And PIF at this stage owned just short of 5 percent,  
17    correct?

18    **A**     They owned -- yes, 5 percent.

19    **Q**     Okay.  Or 4.9 percent?

20    **A**     I mean, yes, almost -- almost exactly 5 percent.

21    **Q**     Okay.  So that left 70 percent of shares outstanding,  
22    correct?

23    **A**     No.  As I mentioned, that's -- I think with my options, it  
24    was I owned 25 percent, so it would mean -- yes, yes.  Seventy  
25    percent -- 70 percent if you take my shares and options, plus

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1 their ownership, that would constitute roughly 30 percent. And  
2 so, yes.

3 **Q** And at this point Tesla was worth approximately  
4 \$60 billion, is that correct?

5 **A** I -- the value of the company was varying quite a lot. I  
6 think it -- I think it was less than that, actually.

7 **Q** But still in the billions of dollars, correct?

8 **A** Yes. Yes.

9 **Q** In the tens of billions of dollars?

10 **A** In the tens of billions of dollars.

11 **Q** So you were discussing a transaction that was going to  
12 involve tens of billions of financing from PIF potentially,  
13 correct?

14 **A** Not necessarily tens of billions from PIF, no. So PIF  
15 would be a participant. But I think the amount required from  
16 PIF would be, I think, potentially much less than 10 billion,  
17 you know.

18 **Q** And that's because you intended to limit PIF to only  
19 having a minority interest in the private Tesla, isn't that  
20 correct?

21 **MR. SPIRO:** Objection, as to time. When?

22 **THE COURT:** I assume we're talking about at this  
23 meeting? Or when?

24 **MR. PORRITT:** Yeah. At this meeting, Your Honor.

25 **THE COURT:** Okay.

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1           **THE WITNESS:** I mean, there was no specific -- I don't  
2 recall a specific discussion about limiting PIF to a particular  
3 ownership stake. I would have to say, like, would I -- it was  
4 not my expectation that PIF would have a majority, if that's  
5 what you're asking.

6           **BY MR. PORRITT**

7           **Q**     Okay.

8           **A**     I would expect them to have quite a bit less than a  
9 majority.

10          **Q**     Okay. In fact, so no specific percentage was discussed  
11 with the PIF at this meeting, is that correct?

12          **A**     Not a specific percentage. Because it would depend on  
13 participation from other shareholders. And also, I think very  
14 importantly, how much of Tesla that I would also purchase using  
15 my SpaceX shares.

16                 Which I think is actually a very important point for the  
17 jury to know, which is that SpaceX -- I really have two big  
18 assets, which is Tesla and SpaceX. And I believe with the  
19 SpaceX stock alone, I felt, you know, that funding was secured.

20          **Q**     So you were contemplating using your SpaceX shares to  
21 purchase more than -- increase your ownership interest over  
22 25 percent of Tesla. Is that correct?

23          **A**     Well, I believe that actually, I could have sold a lot of  
24 my SpaceX shares. SpaceX is the most valuable private company  
25 in the United States. It is -- SpaceX serves as the backbone

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1 of the American space program. As such, it is a very valuable  
2 company.

3 And just as I sold stock in Tesla to buy Twitter, which is  
4 -- I didn't want to sell Tesla stock. But I did sell Tesla  
5 stock in order to make up the difference from -- that was not  
6 there from other investors.

7 **Q** So at this time you were contemplating in your own name  
8 buying additional shares in Tesla, correct, as part of this  
9 go-private? Is that what you're saying?

10 **A** Correct. I think it's very important for the jury to know  
11 that I think that my SpaceX shares, alone, would have meant  
12 that funding was secured. Very important.

13 **Q** We'll come to your statement about "Funding secured" later  
14 on, and what you previously testified about what you meant  
15 about "Funding secured," and what you said at the time about  
16 what you meant by "Funding secured." But let's finish up this  
17 July 31st meeting.

18 You said that -- at this meeting the PIF also discussed  
19 building a Tesla factory in Saudi Arabia, correct?

20 **A** Yeah. Sorry, I apologize. Um, I -- I had trouble  
21 sleeping last night, so unfortunately, I'm not at my best. So,  
22 sorry, could you repeat the question?

23 **Q** At the meeting, the July 31st meeting, the representatives  
24 in the PIF also discussed Tesla opening -- building a factory  
25 in Saudi Arabia?

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1     **A**     Yes, yes, absolutely. So obviously, you know, if you  
2     think about the situation that Saudi Arabia faces in the  
3     future, we are headed towards a sustainable energy future, and  
4     the purpose of Tesla is to accelerate sustainability. And in a  
5     sustainable-energy future, the world would not need oil.

6           And Saudi Arabia is extremely dependent on oil. And so  
7     they are looking for ways to diversify their economy in order  
8     to -- anticipating the day when oil is in low demand. And so  
9     it was obviously very important for them to find alternative  
10    industries.

11    **Q**     Well, my question was: They just discussed Tesla opening  
12    a factory in Saudi Arabia at this meeting. Isn't that correct?

13    **A**     I'm sorry, if I could -- it's a bit hard to hear you. If  
14    you --

15    **Q**     Oh, I'm sorry. Is that better?

16    **A**     Yeah. If you --

17    **Q**     Okay. The question was: At that meeting, they discussed  
18    opening a factory in Saudi Arabia; isn't that correct?

19    **A**     Yes. As -- there was a strategic element to -- there  
20    would be a strategic element to their investment because of the  
21    importance of transitioning Saudi Arabia to new industries as  
22    oil becomes less important.

23    **Q**     You didn't agree to open a factory in Saudi Arabia at the  
24    meeting, did you?

25    **A**     Actually, I -- no, I wouldn't say that's quite correct. I

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1 said that the -- I recognized that it was very important for  
2 them to diversify their economy. And in fact, that I was  
3 supportive of opening a factory in Saudi Arabia to help them  
4 diversify their economy.

5 **Q** In fact, the board of directors of Tesla wouldn't let you  
6 open a factory in Saudi Arabia immediately, would they?

7 **A** I mean, I think your -- I don't think that's -- I don't  
8 think -- I don't think that's correct. I never -- I don't  
9 recall the board ever saying that we should not open a factory  
10 in Saudi Arabia. There's a question of timing.

11 I think you said "immediately," is that correct?

12 **Q** That was what was being discussed at this meeting,  
13 correct?

14 **A** No, that is not correct.

15 **Q** Okay.

16 **A** They -- they -- they wanted to open a factory in Saudi  
17 Arabia in the future. I mean, there are still many years to go  
18 before Saudi Arabia needs to diversify their economy.

19 Obviously, with -- what we're trying to do with Tesla is try to  
20 accelerate a sustainable energy future for the world -- that's  
21 the whole purpose of the company -- as quickly as possible.  
22 But despite our best efforts, it will still take many years to  
23 do so.

24 I think Tesla has done a lot of good in accelerating the  
25 advent of sustainable energy. And in fact, if it were not for

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1 Tesla, the auto industry would not be moving towards  
2 sustainability at this point, I think it's probably fair to  
3 say.

4 But nonetheless, the -- there would not be a need for a  
5 factory immediately in Saudi Arabia, because they don't need a  
6 factory immediately. But would they -- would it be important  
7 for them in the future? Absolutely.

8 And I agreed with, that -- with -- it would be important.  
9 And I was supportive of creating a factory in Saudi Arabia. I  
10 -- yeah, absolutely.

11 Q Now, at this meeting, we've talked about no specific  
12 percentage of ownership in a future private Tesla for PIF was  
13 discussed. Correct?

14 A I don't -- I don't recall a specific ownership percentage.  
15 Um --

16 Q Thank you. So, no total amount of funding was discussed  
17 at this meeting. Correct?

18 A Obviously, the amount required to take Tesla private would  
19 be dependent on the market cap of the value of Tesla. And to a  
20 degree, myself and others would participate.

21 So, but the thing that was really absolutely unequivocal  
22 was that they were absolutely supportive of taking Tesla  
23 private. That, unequivocally, without hesitation. And in  
24 fact, I asked them, I asked Yasir, who is the head of the Saudi  
25 investment fund, if he was certain that -- of being supportive,

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1 and he said yes.

2 And I said: Was other -- any other decisionmakers besides  
3 yourself?

4 And he said there's the Crown Prince, but he has already  
5 checked with the Crown Prince, and the Crown Prince is also  
6 absolutely supportive. So from -- so, so essentially that  
7 there -- I took that to mean it was a done deal.

8 **Q** You didn't have -- Yasir never said "We can provide you  
9 with \$10 billion if you need it," did he?

10 **A** Actually, I -- I think, I think there was some discussion  
11 -- well, it's important to appreciate that the Saudi investment  
12 fund is one of the biggest funds in the world. They -- they  
13 have more money than the value of Tesla, in its entirety. By  
14 far. Many multiples of it.

15 So, I mean, to them, 5 billion or 10 billion or even  
16 20 billion would still be a very small percentage of their  
17 fund.

18 **Q** All right, but they did not give you -- you didn't discuss  
19 them providing 20 billion in funding for you, did you? Not  
20 that specific amount.

21 **A** Not that specific amount. But they were unequivocal --

22 **Q** And in fact, not any specific amount; isn't that correct?

23 **A** I think there was some discussion -- I recall -- important  
24 to bear in mind, this is five years ago. But they were  
25 unequivocal about moving forward. Yasir said he was a final

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1 decision-maker. They have more than enough money to do  
2 whatever it takes. And my understanding was that they would do  
3 whatever it takes.

4 Q Okay. But you don't disagree that no specific amount of  
5 funding was discussed -- specific amount of funding was  
6 discussed at this meeting on July 31st. Isn't that correct?

7 A Like -- an exact number would not be knowable without  
8 knowing who else would participate. But very importantly,  
9 Yasir and the Saudi investment fund, it clear that they would  
10 do whatever it takes, whatever amount of money would be needed.

11 Q And you didn't know who was -- who else might participate  
12 in this potential going-private transaction at this point,  
13 July 31st?

14 A I don't know. So, I think, confident of several other  
15 investors participating.

16 Q But you hadn't discussed it with those particular  
17 investors, had you, by this point? By July 31st, 2018?

18 A It wouldn't be appropriate to discuss it with other  
19 investors because if I were to do so, it would be material  
20 non-public information. You cannot tell this to some investors  
21 and not to others, because they would have an advantage over  
22 the other investors.

23 Q Right. Because it would move the stock price, correct?

24 A It -- it may -- it may or may not move the stock price,  
25 but it would give an advantage to some investors over others,

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1 which would not be right.

2 **Q** Right. So you hadn't -- I'll go back to my question. You  
3 hadn't discussed this going-private transaction with any other  
4 investors other than PIF by July --

5 **A** No.

6 (Reporter clarification)

7 **MR. PORRITT:** I apologize.

8 **BY MR. PORRITT**

9 **Q** But my question is: You hadn't discussed a going-private  
10 transaction with any other investor for these reasons prior to  
11 July 31st, 2018. That's correct, isn't it?

12 **A** Um, okay, so no, that is not correct. There was a dinner  
13 that I had with Larry Ellison and with Dan Dees of Goldman  
14 Sachs, and with Masayoshi Son of SoftBank where the idea of  
15 going public was discussed. Not that we would go public, but  
16 the idea of it. And I believe Larry Ellison was very  
17 supportive of that.

18 **Q** And this was back in 2017, correct?

19 **A** Correct.

20 **Q** And no price for going private was discussed with PIF on  
21 July 31st, 2018. Correct?

22 **A** No price was discussed, but they made it clear they would  
23 do whatever it takes.

24 **Q** Okay. At any price?

25 **A** Well, I suppose not if the company was needing a trillion

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1 dollars or something. But I would say the Saudi fund has  
2 hundreds of billions of dollars.

3 So, provided it wasn't the -- if the value of Tesla went  
4 up by a factor of 10, then maybe that would make it difficult  
5 for them. But there was -- they were very clear they -- they  
6 would do the take-private, essentially no matter what the price  
7 was, within reason.

8 Q And the price of Tesla's stock on July 31st was  
9 approximately \$300? Isn't that correct?

10 A I don't recall the exact price.

11 Q Okay. Does that sound about right?

12 A I don't recall the exact price.

13 Q Okay. I'll represent to you that the closing price on  
14 July 31st was \$298.

15 A Okay.

16 Q And no documents were signed at this July 3 1st meeting,  
17 were there?

18 A No documents were signed, correct. There were no  
19 documents signed.

20 Q Okay.

21 A But I should point -- I should point out that in an  
22 earlier meeting with Yasir of the Saudi fund, I think it was  
23 earlier that year --

24 Q My question was: Was a document signed in this meeting.  
25 And the answer is no. Correct?

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1     **A**     Correct.

2             **MR. SPIRO:** Can we not interrupt the witness?

3             **MR. PORRITT:** Can the witness answer the question,  
4     please?

5             **THE COURT:** Well, first of all he needs to answer the  
6     question. I'm going to allow a brief explanation, but not into  
7     another -- you can explain your answer, but not go off into  
8     another topic.

9             **THE WITNESS:** Okay.

10            **THE COURT:** So if you want to say something about the  
11     document being signed or not, that's one thing. If you want to  
12     talk about another meeting, unless it sheds light on the  
13     document in question, then you should await questioning from  
14     your attorney.

15            **THE WITNESS:** I understand, Your Honor. The -- I  
16     think it does shed some light.

17            **THE COURT:** Go ahead.

18            **THE WITNESS:** So I'll try not to make the answers too  
19     lengthy.

20            But, but I think this prior conversation with the -- the  
21     conversation earlier in the year, beginning of the year, I  
22     believe it was with Yasir of the Saudi fund. He met with me,  
23     and he said he wanted to invest in Tesla, and in a significant  
24     way.

25            And I said that the -- well, the way to demonstrate that

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1 would be to take an initial investment of 5 percent in the  
2 public markets.

3 At that meeting earlier in the year, there was also no  
4 document signed, and there was no discussion of price. I think  
5 this is very important. Because after that meeting, even  
6 though there was no document signed, and even though there was  
7 no discussion of price, they went ahead and they purchased  
8 5 percent of Tesla.

9 **BY MR. PORRITT**

10 **Q** Now, you're now talking about purchasing a much bigger  
11 percentage of Tesla, right? A lot more money. Correct?

12 **A** I would say it is not a lot of money by their standards.

13 **Q** Well, it was more than the 5 percent would cost, correct?

14 **A** Yes. But --

15 **Q** Okay. Thank you.

16 **A** Yes.

17 **Q** So following the meeting, you had no -- if PIF refused to  
18 provide any funding to go private, you had no legal recourse  
19 against them to make them provide the funding. Isn't that  
20 correct?

21 **A** In reality, there is no legal recourse against a nation  
22 state, even if there is a signed document.

23 **Q** Well, you didn't even have a signed document, though, did  
24 you?

25 **A** We did not have a signed document. But the enforceability

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1 of a signed document against the Kingdom of Saudi Arabia would  
2 be essentially zero.

3 Q And you committed to providing additional information to  
4 the PIF at the meeting, correct? Following -- at the meeting  
5 you agreed to provide them with additional information  
6 following the meeting. Correct?

7 A I -- I think so.

8 Q Okay. In fact, you never gave them that information, did  
9 you?

10 A I -- I don't recall. I think that there may have been  
11 some information given to them.

12 Q It's customary, isn't it, before signing a major  
13 transaction such as an acquisition, such as a financing, to  
14 obtain financial information about the transaction?

15 Wouldn't you say that's true, in your experience?

16 A Well, like I said, that's not really how they do business.  
17 If they say they are going to do something, then they do. The  
18 signed document is neither here nor there. That is -- that's  
19 why I mentioned the conversation earlier in the year where I  
20 said -- where they agreed to buy 5 percent of the company, with  
21 no signed deal, and with no discussion of price.

22 And that's -- that's very important. Because one should  
23 expect consistency between, you know, if -- if they're behaving  
24 one way with the 5 percent, then one can expect that they will  
25 be behaving the same way if the number was 20 or 25 percent.

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1     **Q**     And --

2             **THE COURT:** Counsel, hold on for a second. We're  
3     having a problem with the audio feed to the public. And so I  
4     hate to interrupt this, but we need to take a short break so  
5     that our IT people can fix that.

6             So I'm going to take a bit of an unscheduled break for ten  
7     minutes so we can address that particular technical problem,  
8     and then you can resume.

9             **MR. PORRITT:** Thank you, Your Honor.

10            **THE COURT:** All right? Thank you. So we will take  
11    just ten minutes.

12            **THE COURTROOM DEPUTY:** All rise for the jury.

13            (Jury excused)

14            (Recess taken from 9:09 a.m. to 9:24 a.m.)

15            (The following proceedings were held outside of the  
16    presence of the Jury)

17            **THE COURTROOM DEPUTY:** Please remain seated, court is  
18    back in session.

19            **THE COURT:** Okay, let's bring the jury back.

20            **THE COURTROOM DEPUTY:** All rise for the jury.

21            (Jury enters the courtroom)

22            **THE COURT:** All right, have a seat everyone. Thank  
23    you. Apologize for the interruption.

24            Why don't we pick up where we left off.

25            **MR. PORRITT:** Thank you, Your Honor.

**MUSK - DIRECT / PORRITT****DIRECT EXAMINATION, RESUMED**

**BY MR. PORRITT**

**Q** I think before the interruption, Mr. Musk, we were talking about -- discussion about potential due diligence by the PIF at the July 31st meeting? Isn't that correct?

**MR. SPIRO:** Objection, mischaracterizes.

**MR. PORRITT:** Witness can --

**THE COURT:** Well, we didn't use the word "due diligence." You can rephrase it.

**BY MR. PORRITT**

**Q** We were talking about provision of additional information to the PIF before they would make any investment in the going private, isn't that correct?

**A** Yes, maybe? Yes.

**Q** Okay. And that's often referred to as "due diligence"? You understand that term?

**A** Yes. That's not how I would characterize it. But I've seen almost -- if -- if someone agrees to buy something that they would -- you know, that you would -- in concluding the transaction, you would need more information.

**Q** Okay. And you understood that would be the case with the PIF at the July 31st meeting, correct?

**A** No. My understanding was that they would proceed with the deal. They understood the company. Tesla is a -- a public company with public disclosures.

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1 Q But you agreed to provide them additional financial  
2 information, isn't that correct?

3 A Well, they needed to know the exact amount that would be  
4 needed from them, relative to other investors.

5 Q And they need to know the structure of what a  
6 going-private would look like. Correct?

7 A Well, it's pretty straightforward, I. Don't think there's  
8 much in the way of additional structure that's needed.

9 Q Okay. So you discussed with them just buying the  
10 necessary shares to take Tesla private? Is that correct?

11 A My understanding from them very clearly was that they were  
12 committed to take Tesla private.

13 Q And you understood at the time that that involved buying  
14 the outstanding public shares of Tesla, correct?

15 A Not all of them, but some of them.

16 Q You didn't discuss with them the idea of allowing retail  
17 investors to remain invested in a private Tesla, did you?

18 A I don't recall having that discussion with them at that  
19 time.

20 Q Okay. Did you ever discuss that with them?

21 A Possibly in earlier meetings.

22 Q We'll come to that proposal later. But that was a very  
23 novel structure. You understand that, correct?

24 A Yes --

25 Q Because public -- private companies can't have more than

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1 300 shareholders, correct? You understand that?

2 **MR. SPIRO:** Objection, again, to him interrupting the  
3 witness.

4 **THE COURT:** All right. Let the witness answer before  
5 you start your question. Start again.

6 **THE WITNESS:** Sorry. No, you are incorrect. The --  
7 private companies are allowed to have up to 2,500 non-employee  
8 shareholders.

9 **BY MR. PORRITT**

10 **Q** Okay. Tesla had many more than 2,500 shareholders on  
11 July 31, 2018, correct?

12 **A** Yes.

13 **Q** Many thousands more?

14 **A** I don't know the exact number.

15 **Q** Okay.

16 **A** I should say that it's possible to have more, effectively  
17 more -- far more than 2,500 shareholders in a private company  
18 if some of those shareholders are special purpose vehicles that  
19 other investors invest in. That's how SpaceX works.

20 **Q** So does SpaceX have widespread retail investors investing  
21 through special purpose vehicles?

22 **A** Yes.

23 **Q** Does, retail investors?

24 **A** I'm not sure what you mean by "retail investors" but there  
25 are effectively, through special purpose vehicles, many more

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1 than 2,500 shareholders.

2 **Q** But I can't go out and buy an interest in any of those  
3 special purpose vehicles, correct?

4 **A** Incorrect. You can.

5 **Q** Now, Mr. Ahuja showed Yasir and his team out of the  
6 meeting at the end, correct?

7 (Reporter clarification)

8 **BY MR. PORRITT**

9 **Q** Mr. Ahuja showed Yasir and his team out of the meeting at  
10 the end, correct?

11 **A** Yes. He -- he -- I think he also spoke further with Yasir  
12 in giving him a tour of the factory.

13 **Q** And after the meetings, you did not have any further  
14 substantial discussions with Mr. Ahuja about what he discussed  
15 with Yasir while showing him out of the factory, correct?

16 **A** I don't recall.

17 **Q** Now, even after the July 31st meeting with PIF, you had  
18 still not decided whether to take Tesla private. Correct?

19 **A** Correct.

20 **Q** And on August 2nd -- on August 1st or 2nd you spoke with  
21 Anthony Gracias about taking Tesla private? Isn't that  
22 correct?

23 **A** This -- this was five years ago, so, um, I believe -- I  
24 believe that is correct. And my apologies, if -- it's  
25 difficult to remember everything that happened five years ago

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1 down to the last date.

2 **Q** I understand.

3 Mr. Gracias was not enthusiastic about taking Tesla  
4 private; isn't that correct?

5 **A** I -- I don't -- I don't recall his reaction.

6 **Q** Okay.

7 **A** Yeah.

8 **Q** He told you it would be a very arduous process. Is that  
9 correct?

10 **A** At various times I've had discussions with Anthony Gracias  
11 and other members of the board about taking Tesla private  
12 because I thought it would enable us to execute our mission  
13 better as a private company.

14 **MR. PORRITT:** If we can just show the witness his  
15 first deposition testimony from this case, taken in August,  
16 2018.

17 (Document displayed to the Witness)

18 **THE COURT:** Do you have that -- I don't have a copy of  
19 that. Have you provided that?

20 **MR. PORRITT:** Getting it now, Your Honor. Thank you.

21 **THE COURT:** Okay. August 18th -- when was this  
22 deposition?

23 **MR. PORRITT:** It's August 29, 2018, Your Honor.

24 **THE COURT:** August 29?

25 **MR. PORRITT:** 2018.

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1           **THE COURT:** 2018. Okay.

2           **MR. SPIRO:** Does the witness have a copy?

3           **MR. PORRITT:** He's about to have one.

4           **THE COURT:** All right. Are you going to provide a  
5 copy to the witness?

6           (Document tendered)

7           **THE WITNESS:** Thank you.

8           Wow.

9           **BY MR. PORRITT**

10          **Q** I can direct to you Page 177, Line 9 to 178, Line 1.

11           **THE COURT:** Okay. 177, Line 9, to what?

12           **THE WITNESS:** Okay, yeah, I see it.

13           **MR. PORRITT:** 178, Line 1.

14           **THE COURT:** Are you asking the witness to look at it  
15 to refresh? Or are you going to read that?

16           **MR. PORRITT:** I'm just -- just -- one moment,  
17 Your Honor, because there are --

18           (Off-the-Record discussion between counsel)

19           **MR. PORRITT:** Bear with me, Your Honor.

20           **THE COURT:** Okay.

21           **MR. PORRITT:** I apologize. Take that down.

22           (Document taken off display)

23           **MR. PORRITT:** I'll move on, Your Honor, at this point  
24 in time.

25           **THE COURT:** Okay.

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1           **MR. PORRITT:** It's -- if I can refer the witness to  
2 Exhibit 81, please.

3           **THE WITNESS:** Um, Exhibit 81.

4           **THE COURT:** I believe Mr. Musk has a binder. Is there  
5 a binder with the exhibits?

6           **THE WITNESS:** I can see it on the screen, sir.

7           **THE COURT:** All right.

8           **MR. PORRITT:** This has already been admitted,  
9 Your Honor.

10          **THE COURT:** Okay.

11          (Document displayed)

12   **BY MR. PORRITT**

13   **Q**    On August 2nd you sent this email to the board, correct?

14   **A**    Correct.

15   **Q**    And you hadn't -- you sent this without consulting any  
16 financial advisers, correct?

17   **A**    Correct.

18   **Q**    And you took no legal advice before sending this email to  
19 the board. Correct?

20   **A**    I think I may have spoken to some lawyers but I'm not  
21 specific -- I do not -- this was not drafted by lawyers; it's  
22 was drafted by me.

23   **Q**    Okay. And it says there, "Offer to Take tesla Private At  
24 420," correct?

25   **A**    Correct.

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1     **Q**     All right. And you derived the 420 price by applying a  
2     20 percent premium to the then-market price on August 2nd,  
3     isn't that correct?

4     **A**     Correct.

5     **Q**     All right. Although the 20 percent premium generated a  
6     price of \$419. Isn't that correct?

7     **A**     I think \$419 and some number of cents.

8     **Q**     Okay. And you rounded up to 420 because you thought that  
9     would be a joke that your girlfriend would enjoy? Isn't that  
10    correct?

11    **A**     No, that is not -- well, there is some, I think, karma  
12    around 420. Although, I perhaps should question whether that  
13    is good or bad karma at this point.

14    **Q**     And you would agree that is not a great reason to pick a  
15    price for a potential multi-billion-dollar going-private  
16    transaction, correct?

17    **A**     The 420 was a coincidence. As you point out, it is  
18    approximately a 20 percent premium on the stock price. Yeah.  
19    So it's a coincidence that it's at 420.

20    **Q**     So if I can refer -- now, if I can refer you to your first  
21    deposition transcript in this case.

22            **MR. SPIRO:** Under what basis, Your Honor?

23            **THE COURT:** Yeah, what are you -- are you impeaching?  
24    Or I'm not sure what the --

25            **MR. PORRITT:** Well, if Your Honor wants to review it,

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1 I directly -- I think it relates for impeachment purposes,  
2 essentially, Your Honor.

3 **THE COURT:** Okay. What -- give me the page number.  
4 I'm going to look at it and see what -- whether there is some  
5 impeachment value here.

6 **MR. PORRITT:** And I believe the impeachment -- the  
7 lines, Your Honor, are 178:7 through 19.

8 (Document displayed to the Witness)

9 **THE COURT:** I'm not sure how that's impeaching.

10 **MR. PORRITT:** All right. I'll move on then,  
11 Your Honor.

12 **THE COURT:** All right.

13 (Document taken off display)

14 **BY MR. PORRITT**

15 **Q** Now, the 420 price -- strike that.

16 The Tesla stock price had increased significantly between  
17 July 31st and August 2nd, isn't that correct?

18 **A** It had increased.

19 **Q** Okay. You didn't contact PIF to discuss the 420 price  
20 that you proposed to the board, correct?

21 **A** Correct.

22 **Q** All right. You certainly didn't say that you had chosen  
23 420 because of a joke, correct?

24 **A** I think you are being misleading here, sir. 420 was not  
25 chosen because of a joke; it was chosen because it was a

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20 percent premium over the stock price.

**Q** And increasing the stock price from 419 to 420 would have added millions, at least, to the potential cost of the transaction, correct?

**A** I think -- I think it was 419 and, you know, 60 cents or something like that. So it would make sense to round up to the nearest round number, which would happen to be 420. But it certainly was not a joke.

**Q** Well, you said -- is it not true that you rounded it up because you thought your girlfriend would find it funny?

**A** I don't know if she found it funny or not. But the 420 price was not a joke.

**Q** So at this stage, you had --

**THE COURT:** Counsel, now I'm having technical difficulties. My -- my real time.

(A pause in the proceedings)

**THE COURT:** Thank you.

**BY MR. PORRITT**

**Q** If I can refer you back to Exhibit 81, please, the email to the board.

**A** Sure.

(Document displayed)

**MR. PORRITT:** Thank you.

**BY MR. PORRITT**

**Q** In your -- in this email to the board on August 2nd, 2018,

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1 you give your reasons for wanting to go private, isn't that  
2 correct?

3 A That is correct.

4 Q Okay. And the first one is: Being public subjects Tesla  
5 to constant defamatory attacks by the short-selling community,  
6 harming the brand, isn't that correct?

7 A Yes.

8 Q Okay.

9 A I think it is difficult to appreciate now just how much  
10 attack Tesla was under by short-sellers who wanted Tesla to  
11 die.

12 Q Now, following this email you expected Tesla would form a  
13 special committee? Is that correct?

14 A Yes.

15 Q Okay. And that special committee would then negotiate the  
16 terms for a take-private, correct?

17 A They would negotiate a price.

18 Q Okay. And additional terms, correct?

19 A I think it's really just -- it's really about a price that  
20 would then be proposed to shareholders.

21 Q Now, you'd gone through a special committee process in  
22 2016 when Tesla acquired Solar City, correct?

23 A Yes.

24 Q Okay. And that had been a very arduous process, isn't  
25 that correct?

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1     **A**     Yes.

2     **Q**     Okay. Now, after this August 2nd email was sent, you had  
3     a further conversation with Anthony Gracias, correct?

4     **A**     Yes.

5     **Q**     And he -- you discussed with Mr. Gracias the need to  
6     engage legal and financial advisers for everyone, is that  
7     correct?

8     **A**     I -- I don't recall the details of that conversation.

9             **MR. PORRITT:** If I can refer the witness to  
10    Exhibit 83. It's been admitted, Your Honor.

11            **THE COURT:** Okay.

12            (Document displayed)

13    **BY MR. PORRITT**

14    **Q**     So you see, these are the minutes of a meeting of the  
15    board of directors held on August 3, 2018. Do you see that?

16    **A**     Yes.

17    **Q**     And you attended this meeting?

18    **A**     Yes.

19    **Q**     Okay. And you attended by telephone?

20    **A**     I assume so, yes.

21    **Q**     Okay. Now, if I can refer you to Page 2 of Exhibit 83.

22            (Document displayed)

23    **Q**     The first paragraph.

24            (Document enlarged)

25    **Q**     You talk there about remaining private for approximately

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1 five years, and then going public again? Is that correct?

2 **A** Yes.

3 **Q** Okay. That idea had not been discussed with the PIF on  
4 the July 31st meeting, correct?

5 **A** I don't -- I don't recall whether that was discussed or  
6 not.

7 **Q** Now, then, in the second paragraph on Page 2 of  
8 Exhibit 83, you also expressed to the board your desire for  
9 current shareholders in the company to remain shareholders  
10 after the proposed privatization. Isn't that correct?

11 **A** Yes. I care a great deal about the shareholders, and  
12 would not want to force them to not be part of Tesla if they  
13 wish to be part of Tesla.

14 **Q** And the board told you that that would be really difficult  
15 for small investors, correct?

16 **A** I -- I don't recall them saying that. As I said, in the  
17 case of SpaceX, which is also a very large company, we have  
18 many thousands of small investors.

19 **Q** If I can refer you to your deposition transcript you have  
20 in front of you, if I can refer you to Page 194 at Line 22 --

21 **MR. PORRITT:** This is to refresh recollection,

22 Your Honor.

23 **BY MR. PORRITT**

24 **Q** -- to 195:25.

25 **THE COURT:** All right. So you're asking Mr. Musk to

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1 read that and see if that refreshes his recollection?

2 **MR. PORRITT:** Correct.

3 **BY MR. PORRITT**

4 **Q** Read that to yourself, Mr. Musk.

5 **THE COURT:** All right. So you can read that to  
6 yourself, Mr. Musk. Do you have that?

7 **THE WITNESS:** The highlighted section?

8 **THE COURT:** No. It's in your deposition.

9 **BY MR. PORRITT**

10 **Q** In the transcript that you have in front of you.

11 **A** Okay. Sorry, which page is that?

12 **Q** 194, Line 22, to 195, Line 25.

13 **A** 194 --

14 (Witness examines document)

15 **A** Yes. I have that page.

16 **MR. SPIRO:** Your Honor, I apologize for interrupting  
17 again, but this isn't a passage related to anything that -- if  
18 the Court would take a moment --

19 (Reporter clarification)

20 **MR. SPIRO:** Yeah, if the Court would look at the  
21 passage that counsel is referring Mr. Musk to, it's not -- I  
22 don't see any relation to this. I don't see it as proper to  
23 refresh recollection. I don't see it on point. I don't think  
24 this is proper.

25 **THE COURT:** Well, he's probably referring to the last

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1 couple paragraphs.

2 Is that what you want to refresh on?

3 **MR. PORRITT:** Yes. Correct, Your Honor.

4 **MR. SPIRO:** Wait -- can I -- the final paragraphs are  
5 where?

6 **THE COURT:** I think -- are you referring to Line 18,  
7 in particular, through 25?

8 **MR. PORRITT:** Yes, exactly, on 195. I just gave -- I  
9 wanted to give the full question and answer for full context,  
10 to be fair.

11 **MR. SPIRO:** What page is it?

12 **THE COURT:** All right. I'm going to allow it to  
13 refresh recollection. It is not being admitted for any  
14 impeachment purpose.

15 So for the limited purpose of refreshing Mr. Musk's  
16 recollection, I'll allow him to read that, and then you can ask  
17 a question. I'm not sure you're going to get much of a  
18 different response, but you can ask the question again.

19 So, Mr. Musk, if you could just read to yourself Page 194,  
20 starting with Line 22 at the bottom, Line 22, and go through,  
21 and then the entirety of the next page, 195.

22 If you'd just read that to yourself. You don't have to  
23 read it out loud.

24 **THE WITNESS:** Yes, Your Honor.

25 **THE COURT:** And Mr. Porritt will ask you a question

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1 after that.

2 (Witness examines document)

3 **THE WITNESS:** I've read it.

4 **BY MR. PORRITT**

5 **Q** Okay. Does this refresh your recollection that the board  
6 brought up, that this is going to be really difficult for small  
7 investors?

8 **A** Um, yes. But I -- I -- um, as I mentioned, we have many  
9 small investors in SpaceX. What I had in mind for Tesla was a  
10 structure similar to how SpaceX operates where we do have many  
11 thousands of small investors.

12 **Q** Okay. And you referenced to the board Fidelity is a  
13 shareholder in SpaceX?

14 **A** Yes.

15 **Q** All right. And T. Rowe Price want to be in SpaceX,  
16 correct?

17 **A** Correct.

18 **Q** All right. Are those small retail investors that you're  
19 referring to there?

20 **A** No, but they represent small retail investors. So a way  
21 for small investors to potentially remain part of Tesla would  
22 be to invest in -- use their investment in Fidelity to thereby  
23 own Tesla, which many investors do.

24 **Q** Now, you have still not taken any legal advice on this  
25 point, on the feasibility of having widespread retail investor

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1 participation in a private Tesla, correct?

2 **A** Well, I had -- I have the case example which was, again,  
3 very important. SpaceX is also a large company and has many  
4 small investors, and also has Fidelity as an investor. And  
5 Fidelity represents many small investors in their fund.

6 **THE COURT:** Okay. So Mr. Musk, I need you to answer  
7 the question first, and then I'll allow you to explain. I  
8 don't think you actually answered the precise question.

9 **THE WITNESS:** Yes, Your Honor.

10 **THE COURT:** Why don't you ask it again, Mr. Porritt.

11 **BY MR. PORRITT**

12 **Q** You've still not taken any legal advice on this exact  
13 issue about having widespread retail investor participation in  
14 a private Tesla. Correct?

15 **A** Correct.

16 **Q** Thank you.

17 Now, also in on the second paragraph on Exhibit 83, you  
18 stated it was not your intention to provide shareholder control  
19 to any single entity, but rather, to have ownership of the  
20 company be dispersed over a broad base of shareholders.  
21 Correct?

22 **A** Correct. I wanted to do right by the existing  
23 shareholders of Tesla, to the best of my ability.

24 **Q** And that wouldn't be the case if you used your SpaceX  
25 shares to buy a majority interest in Tesla. Correct?

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1     **A**     I didn't say SpaceX shares would buy a majority interest,  
2     but just that the SpaceX shares would be available to make up  
3     the difference of those shareholders who may not wish to  
4     remain.

5     **Q**     And you had only discussed this transaction with one  
6     another investor at this time, correct?   PIF?

7     **A**     And Larry Ellison, who was also a major investor.

8     **Q**     Did you discuss going private at 420 with Larry Ellison in  
9     2017?

10    **A**     No, not --

11    **Q**     Thank you.

12    **A**     Okay.

13    **Q**     What was the market capitalization of Tesla in 2017?   Was  
14    it comparable to what it was in July, 2018?

15    **A**     I don't recall the exact number, but I think at times it  
16    may have been comparable.

17    **Q**     And then Exhibit 83 continues reporting on your remarks.  
18    This is you talking to the Tesla board of directors.   Correct?

19    **A**     I believe so.

20    **Q**     Okay.   And you say at the bottom of the following  
21    paragraph there, towards the bottom of that page:   There'd be  
22    significant demand from existing and new investors, which may  
23    include the UAE Sovereign Wealth Fund, the Norwegian Sovereign  
24    Wealth Fund, Silver Lake, Fidelity, Baillie Gifford, Tencent  
25    and T. Rowe Price.

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1 Do you see that?

2 **A** Yes.

3 **Q** All right. When you made this statement to the board, you  
4 hadn't spoken to UAE. Correct?

5 **A** I had not.

6 **Q** Okay. You hadn't spoken with the Norwegian Sovereign  
7 Wealth Fund?

8 **A** No, no.

9 **Q** Okay. You hadn't spoken to Silver Lake about a  
10 going-private transaction?

11 **A** I spoke to Silver Lake, but I'm not sure exactly when that  
12 was.

13 **Q** Okay. You hadn't spoken to Fidelity about a going-private  
14 transaction?

15 **A** Not yet.

16 **Q** You hadn't spoken to Baillie Gifford about a going-private  
17 transaction?

18 **A** No.

19 **Q** You hadn't spoken to Tencent about a going-private  
20 transaction?

21 **A** No, but I was also aware that Tencent was very comfortable  
22 with private investments.

23 **Q** You hadn't spoken to T. Rowe Price about a going-private  
24 transaction?

25 **A** No.

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1 Q Okay. And yet, you still told the board that they would  
2 support a going-private transaction, without speaking to them?

3 A Well, my statement here is that it may include.

4 Q And after the August 7th tweets when you actually spoke to  
5 many of these investors, it turned out they could not support  
6 going private. Correct?

7 A Some of the investors could not support -- well, actually,  
8 it's better to say that some of the investors preferred, um,  
9 that Tesla remain public.

10 Q But it turned out that many T. Rowe Price funds couldn't  
11 participate in a private Tesla, isn't that correct?

12 A You know, the phrasing of your question, I believe, is  
13 misleading. T. Rowe Price has made many large investments in  
14 private companies in excess of a billion dollars. Yeah.

15 Q Well, that depends on the particular fund of T. Rowe  
16 Price, correct?

17 A Yes, but I'm talking about T. Rowe Price --

18 Q And the funds that are invested in Tesla, you didn't know  
19 whether they had any ability to invest in a private Tesla, did  
20 you?

21 A I was aware that the companies could -- could and did  
22 invest in private companies. Indeed, Fidelity continues to be  
23 an investor in Twitter, even though Twitter is private.

24 Q Right. But the funds that -- the fund that -- Fidelity  
25 fund that invests in private companies is not the same fund

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1 that invested in Tesla, correct?

2 **A** My apologies, but I think -- that is not always true.  
3 Tencent, for example, which you mention here, could invest in  
4 public or private at their will.

5 **Q** I was talking about Fidelity. The Fidelity funds that  
6 invest in Tesla do not all invest in private companies.  
7 Correct?

8 **A** That is correct. But I think --

9 **Q** Okay, thank you.

10 **A** Okay.

11 **Q** If you turn to the next page on Exhibit 83, the paragraph  
12 title starts "The Board Then Discussed Next Steps."

13 Do you see that?

14 **A** Yes.

15 **Q** And then it says the board then -- it was noted that a  
16 detailed proposal regarding a going-private transaction had not  
17 yet been made. Do you see that?

18 **A** Yes.

19 **Q** You agree that your email that we looked at earlier was  
20 not a detailed proposal?

21 **A** Yes.

22 **Q** Okay. And the board couldn't properly analyze or evaluate  
23 it at this stage, is that correct?

24 **A** That they -- they could certainly give it great thought,  
25 but -- I mean, they certainly could think about it.

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1 Q Okay. They couldn't properly analyze and evaluate it,  
2 correct?

3 A Well, when -- when taking a company private, there really  
4 is just the -- the price is the question.

5 Q If you look back at Exhibit 83, it says right there  
6 (As read):

7 "One, a detailed proposal would be needed in  
8 order for the board to properly analyze and  
9 evaluate it."

10 Doesn't it say that?

11 A Yes.

12 Q Okay. And you agree with that, correct?

13 A I suppose so.

14 Q Okay. And then the board goes on to authorize you, as an  
15 initial step, to have initial -- initial conceptual  
16 conversations with a few of Tesla's top shareholders to explore  
17 their interest and gauge their reaction. Correct?

18 A Yes.

19 Q So this is an initial step. Right?

20 A Yes.

21 Q Okay. And you needed the board's authority to speak to  
22 investors about a potential going-private transaction.  
23 Correct?

24 A Um, no, I believe that is not correct.

25 Q Okay. You don't think you needed the board's authority to

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1 speak to the shareholders of Tesla?

2 **A** You just changed the question. The really important point  
3 here is that the -- I, as the bidder, I'm actually not allowed  
4 to have detailed discussions with the board because the board  
5 is -- represent the counterparty. So it would be collusion if  
6 I, um, discussed it in detail with the board. Because I would  
7 be the bidder. So the board has to -- is the counterparty.  
8 You know, I'm not sure this distinction is clear.

9 **Q** What difference does that make as to whether you can speak  
10 to Tesla investors about a potential going-private transaction?

11 **A** It's a big difference because when I'm the -- when I'm the  
12 bidder, the bidder to take Tesla private, um, the board then  
13 negotiates on behalf of shareholders.

14 **Q** So, and you knew once a special committee was formed that  
15 it would control the disclosure process to Tesla investors,  
16 correct?

17 **A** Not -- not -- not quite correct, no. The -- they would  
18 speak to investors, and I, as the bidder, would speak to  
19 investors. But the two of us, the board and I, could not  
20 collude in talking to investors because I would -- I would be  
21 the counterparty in that situation. I would be the bidder.

22 And as -- so the board would talk to shareholders, and I  
23 would talk to shareholders, but they would be separate, because  
24 the board in this case would be representing the shareholders  
25 as the seller, and I am representing myself and others as the

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1 buyer.

2 Q Later, when the special committee was formed by Tesla,  
3 they, in fact, controlled all the disclosures and reach-out to  
4 investors, isn't that correct?

5 A I believe that is not correct. Nor could it be correct.

6 Q At this meeting on August 3rd with the board, did you  
7 discuss your intent to make a full public disclosure of your  
8 going-private bid?

9 A Are -- are -- I think, I think there may have been such --  
10 some discussion to that effect.

11 Q Did you tell the board that you were going to make a  
12 public statement that you were considering taking Tesla private  
13 at 420?

14 A There was -- I just -- I don't recall the exact nature of  
15 the discussion.

16 Q The board did not authorize you to disclose the  
17 going-private transaction to the entire market, did they?

18 A Again, you're -- this is -- I think this is misleading,  
19 because the board is the counterparty. As the bidder, I cannot  
20 discuss -- the board has to represent the shareholders. I  
21 represent the bidding coalition.

22 THE COURT: Okay, but if you could answer that  
23 question, then I'll allow you to explain it. So I think  
24 there's a yes-or-no answer, and then you can explain.

25 So why don't you ask the question again.

## MUSK - DIRECT / PORRITT

1 BY MR. PORRITT

2 Q All right. The board did not authorize you to disclose  
3 the going private transaction at 420 to the entire market, did  
4 they?

5 A They did not, but it would not be -- that is not something  
6 the board would -- is allowed to do. The board's not allowed  
7 to do that.

8 Q Now, following this meeting, you spoke with Michael Dell  
9 over the weekend, is that correct?

10 A Yes.

11 Q About his experience taking his company, Dell, private,  
12 correct?

13 A Yes.

14 Q And he told you that it was a very difficult process,  
15 correct?

16 A He told me it was a difficult process, yes.

17 Q And he told you it took approximately a year?

18 A I don't recall him saying a specific date.

19 Q What about a timeline?

20 A No, the -- the conversation I had with Michael Dell was  
21 just to ask him if he thought that the Dell -- the taking Dell  
22 private was -- did -- did he regret taking Dell private, or did  
23 he think it was a good idea. I wanted to understand if he  
24 thought that that was something, in hindsight, that he would  
25 still have done. Like, did he think it was a good thing for

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1 his company or not.

2 And he -- he was unequivocal, and said that he thought it  
3 was a good idea to take Dell private.

4 Q And then you had a conversation with Egon Durban on  
5 August 6th, isn't that correct?

6 A Yes.

7 Q And Egon Durban is the chief executive of Silver Lake, is  
8 that correct?

9 A Yes.

10 Q Okay. The conversation lasted about 25 minutes?

11 A I don't recall the exact time.

12 Q Okay. And you didn't discuss with him pricing at 420 per  
13 share, correct?

14 A I don't think so.

15 Q Okay. You didn't discuss with him your idea of allowing  
16 existing shareholders to retain their interest in a private  
17 Tesla?

18 A Actually, I think I did.

19 Q Okay.

20 A Yeah, I'm pretty sure I did.

21 Q And during this weekend and then on to the Monday, which  
22 is August 6th, you didn't have any further conversations with  
23 Tesla's top shareholders about a potential going-private  
24 transaction, did you?

25 A No. I was concerned about selective disclosure to some

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1 shareholders but not others, which would advantage some  
2 shareholders relative to other shareholders.

3 **Q** You didn't have any further communications with the PIF,  
4 correct?

5 **A** I don't recall. This is five years ago, so --

6 **Q** Okay. In fact, the PIF learned of your bid the same way  
7 everyone else did when they saw your tweet on August 7th, isn't  
8 that correct?

9 **A** They -- they learned the price proposal on that date, yes.

10 **Q** Okay.

11 **MR. PORRITT:** If we can, at this point I'd like to  
12 show to the witness Exhibit 87, Your Honor, not yet admitted  
13 into evidence.

14 (Document displayed to the Witness)

15 **MR. SPIRO:** No objection.

16 **THE COURT:** Okay. No objection as to showing or as to  
17 admission?

18 **MR. SPIRO:** Either, Your Honor.

19 **THE COURT:** All right.

20 **MR. PORRITT:** Permission to publish, Your Honor?

21 **THE COURT:** All right. You're moving to admit, I take  
22 it?

23 **MR. PORRITT:** Yes, please, yes. Sorry.

24 **THE COURT:** Then we will deem it admitted. You can  
25 publish.

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(Trial Exhibit 87 received in evidence.)

(Document displayed)

**BY MR. PORRITT**

**Q** Do you see Exhibit 87 in front of you, Mr. Musk?

**A** Yes.

**Q** And this is an email you received from Dave Arnold on the morning of August 7th, correct?

**A** Yes. Yes.

**Q** All right. And you received this email from Dave Arnold at 8:16 a.m., correct?

**A** Yes.

**Q** And you were at home when you received this email?

**A** Yes.

**Q** Okay. And that's your home in Los Angeles, is that correct?

**A** Yes. I don't own any houses anymore, but that is my former home.

**Q** Okay. And your plan for the day was to fly to the Tesla factory in Nevada that morning, isn't that correct?

**A** Yes. I was going to work on production issues.

**Q** And your flight was perhaps at approximately 10:00 a.m. that morning, is that correct?

**A** I think so.

**Q** Okay. And that's a private jet, correct? Not a corporate -- not a commercial flight?

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1     **A**     Correct.

2     **Q**     Okay. So the plane waits for you until you get there?

3     **A**     Yes.

4     **Q**     Okay. And you drove yourself to the airport to catch that  
5 flight, correct?

6     **A**     Correct.

7     **Q**     And as it's your jet, you drive right up to the aircraft,  
8 isn't that correct?

9     **A**     I mean, not right -- close to the --

10    **Q**     Okay. And either on the way or when you got to the  
11 airport, you typed a tweet that we see in Exhibit 8, correct?

12    **A**     The infamous tweet?

13           (Document displayed)

14    **Q**     Well, here, we can see it here.

15           Do you see that?

16    **A**     Yes.

17    **Q**     Okay. Did you type that while you were driving or when  
18 you got to the airport?

19    **A**     I -- I believe I typed it after I arrived at the airport.

20    **Q**     Okay. And then you sent the tweet, and then you got in  
21 your jet and you took off, is that correct?

22    **A**     Yes.

23    **Q**     Okay. Now, if I can go back to Exhibit 87.

24           (Document displayed)

25    **Q**     You see Dave Arnold is referring to a *Financial Times*

## MUSK - DIRECT / PORRITT

1 story, correct?

2 A Yes.

3 Q You didn't read that *Financial Times* story before you sent  
4 your tweet, did you?

5 A I don't think the *Financial Times* had run the story at  
6 that point.

7 Q Okay. But here, when you knew that the -- Dave Arnold  
8 warned you that the *Financial Times* is preparing to run a  
9 story, and proposes no comment, and you say "Ok." Isn't that  
10 correct?

11 A Yes. "Ok," just meaning that -- acknowledged.

12 Q All right. And, then, did you subsequently read -- did  
13 the *Financial Times* subsequently publish a story?

14 A Um, yes.

15 Q Okay. Did they publish it before your tweet, Exhibit 8?

16 A I -- I don't recall the exact timing.

17 Q Okay. Was the -- so the *Financial Times* wasn't a factor  
18 in you publishing the tweet, Exhibit 8?

19 A No, the *Financial Times* -- learning that they were going  
20 to write the story, it was a significant factor. In fact, I  
21 would say it was the driving factor behind the tweet.

22 Q All right. But you didn't know what the *Financial Times*  
23 was actually going to say when you published the tweet, did  
24 you?

25 A Not exactly. But the information was concerning because

## MUSK - DIRECT / PORRITT

1 this information was not public.

2 Q But Mr. Arnold didn't tell you that the *Financial Times*  
3 was going to publish anything about a going-private  
4 transaction. Correct?

5 A Well, he -- I mean, the email says -- has a lot of detail  
6 here that only the Saudis and maybe a handful of others would  
7 know. This was -- this was quite shocking to see this  
8 information.

9 Q My question was: Dave Arnold does not tell you that the  
10 *Financial Times* story is going to contain any information about  
11 a going-private transaction; isn't that correct?

12 A Correct.

13 Q Okay. And yet your August -- your Exhibit 8, the  
14 August 7th tweet, discusses a going-private transaction at 420,  
15 correct?

16 A Yes.

17 Q And you thought it was better to tweet it out in response  
18 to a *Financial Times* story that discusses just Saudi Arabia  
19 acquiring an interest in Tesla, that required you to then  
20 publish that there is a potential going-private transaction at  
21 420?

22 A My concern here was that if they were -- if the *Financial*  
23 *Times* was aware of this level of private information, then  
24 there was a good chance that they were also aware of the  
25 take-private. And I was concerned that it was important for,

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1 you know, the market as a whole to know about the take-private  
2 transaction.

3 Q You were concerned that they might say that you were  
4 considering taking Tesla private at 420? Is that what you were  
5 concerned about the *Financial Times* reporting?

6 A I didn't know quite what the -- what -- you know, when --  
7 newspapers do not tell you everything they're going to print.  
8 They don't run everything by you.

9 So my concern here was that if they knew all of this  
10 information, then they could also potentially know about the  
11 take-private. And I wanted to make sure that all investors  
12 were aware of the take-private just in case the article  
13 contained information about the take-private.

14 Q So you were concerned that this *Financial Times* article  
15 (Indicating) might contain reference to the going-private? Is  
16 that correct?

17 A Correct.

18 Q All right. But you didn't read the article to find out  
19 first before sending your tweet, correct?

20 A By then it would have been too late, --

21 Q Well, aren't you --

22 A -- I think.

23 Q Wouldn't one way to be worried about a potential leak in a  
24 *Financial Times* article is to read the article to see what  
25 information it contained?

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1     **A**     No, by the time the article is written and published,  
2     the -- the cat's out of the bag. So I didn't know what more  
3     information the *Financial Times* was aware of. And they  
4     certainly could have known about the take-private, given that  
5     they also knew all of this confidential information. And I  
6     wanted to make sure that all investors would be on an equal  
7     footing.

8     **Q**     Well, the *Financial Times* article was published before you  
9     published your tweet. Correct?

10    **A**     I don't know of the exact timing.

11    **Q**     Okay.

12           (Document taken off display)

13           **MR. PORRITT:** This will just be to refresh  
14     recollection, Your Honor.

15           (Document displayed)

16           **THE COURT:** So you're showing something --  
17     (Document taken off display)

18           **THE COURT:** Are you showing a document to the --

19           **MR. PORRITT:** Not yet, Your Honor. Sorry.

20           **THE COURT:** Okay.

21    **BY MR. PORRITT**

22    **Q**     There's really no reason why you couldn't have waited --  
23     so, strike that.

24           First of all, you published the August 7th tweet at  
25     9:48 a.m. Pacific time. Correct?

## MUSK - DIRECT / PORRITT

1 (Document displayed)

2 **A** That is the time shown.

3 **Q** Okay. Do you have any reason to think it's incorrect?

4 **A** No.

5 **Q** Okay. Now, that's 12:48 Eastern time, correct?

6 **A** Yes.

7 **Q** Okay. And yet -- so that's in the middle of a trading  
8 day, correct? This was a Tuesday?

9 **A** Yes.

10 **Q** Okay. And typically you don't disclose material  
11 information during a trading day. Correct?

12 **A** Normally, that would -- normally, you would not disclose  
13 important information during a trading day. But I was  
14 concerned that the take-private would leak during, during the  
15 trading day and so I wanted to make sure that the -- that the  
16 shareholders, you know, would know what my intent was.

17 **Q** And you also knew that Tesla's required by Nasdaq, its  
18 exchange, to pre-clear statements regarding a -- containing  
19 material information. Correct?

20 **A** I don't think that's correct.

21 **Q** Okay. Are you aware that you have to pre-clear any  
22 statements with Nasdaq before you make them, before Tesla makes  
23 them?

24 **A** No, I believe that is not correct.

25 **Q** Okay. But either way, you didn't pre-clear your tweet

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1 with Nasdaq before you published it, correct?

2 **A** I mean, we almost never talk to Nasdaq about anything.

3 (Document taken off display)

4 **Q** Now, refer back, refer to Exhibit 8.

5 (Document displayed)

6 **Q** You wanted three pieces of information, right, to be  
7 communicated by that tweet. Isn't that correct?

8 **A** Yes.

9 **Q** All right. You wanted to communicate that you were  
10 considering taking Tesla private at a price of 420, and with  
11 funding secured at 420. Correct?

12 **A** I wanted to -- I mean, it's quite literal. I'm saying  
13 that I am considering -- very importantly, considering -- not  
14 that it will happen, but that I'm thinking about it -- taking  
15 Tesla private at 420. And that, in my opinion, the funding is  
16 secured for taking Tesla private at that price.

17 The reason I said that price was that I was not confident  
18 it could be done at a higher price.

19 **Q** Okay. And so there was a limit to the amount of funding  
20 you thought you could acquire. Correct?

21 **A** Of course, of course, there would be a limit. It can't  
22 be, like, a trillion dollars.

23 **Q** Okay. Now, and you wanted to communicate this to all  
24 investors of Tesla, correct?

25 **A** Yes.

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1 **Q** And you wanted them to rely on this tweet, right, in  
2 making their decisions about buying or selling Tesla  
3 securities, correct?

4 **A** Yes.

5 **Q** Okay. And you expected that Tesla's stock price would  
6 increase following this tweet, correct?

7 **A** It is difficult to say that whether the pricing -- price  
8 would -- of Tesla would increase or decrease, because often  
9 counter-intuitive things happen. And since -- I'm not saying  
10 that this deal will be done; I'm simply saying that I'm  
11 considering it. Yeah. Not that it'll be done, but that I'm  
12 considering it.

13 **Q** Okay.

14 **MR. PORRITT:** If we could show the witness a portion  
15 from his second deposition taken, Page 183, Lines 15 to 23.

16 Impeachment purposes, Your Honor.

17 **THE COURT:** 183?

18 **MR. PORRITT:** Page 183, Line 15 through 23.

19 (Document displayed to the Witness)

20 **THE COURT:** This is the volume that you have given me?  
21 This is different from August 29?

22 **MR. PORRITT:** Correct, Your Honor. This is taken  
23 November 5, 2021.

24 **THE COURT:** Okay. What's the page?

25 **MR. PORRITT:** 183.

**MUSK - DIRECT / PORRITT**

1           **THE COURT:** Lines?

2           **MR. PORRITT:** 15 through 23, Your Honor.

3           **THE COURT:** All right. Do you want to read that for  
4 impeachment purposes, or refresh recollection?

5           **MR. PORRITT:** We can play it by video if -- with the  
6 Court's permission, for impeachment purposes. We'd play the  
7 video -- the video -- by video, Your Honor.

8           (Porter clarification)

9           **MR. PORRITT:** Okay. That's okay, if we can play --  
10 we'll just play the video.

11           **MR. SPIRO:** This is -- because this is -- Your Honor,  
12 this is because he said it would be difficult to say? That's  
13 the impeachment?

14           **THE COURT:** Well, they can either -- I'm sorry.  
15 What's your question?

16           **MR. SPIRO:** My question is -- I'm objecting that when  
17 a witness says something is difficult to say, it's not proper  
18 impeachment.

19           **THE COURT:** Overruled. I'm going to allow it.

20           (Portion of video played, not reported)

21 **BY MR. PORRITT**

22 **Q** So you expected there would be some increase in Tesla's  
23 stock price following your tweet, correct?

24 **A** I -- I said it was -- I said it was not certain but it --  
25 that likely there would be some increase. But as I said before

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1 in prior testimony, these things are counter-intuitive.

2 So for example, when I said that at one point I tweeted  
3 that I thought the stock price was too high, and the stock  
4 actually went higher -- you know. It's difficult to say how  
5 the market would react to considering something.

6 **MR. SPIRO:** Your Honor, the plaintiff didn't play the  
7 whole answer to the question.

8 **THE COURT:** So you're saying for completeness purpose,  
9 that you want more played?

10 **MR. SPIRO:** I think he has to play at least the  
11 question and answer. Whether he has to play other things to --  
12 to adhere to the rule of completeness is, to my mind, a  
13 separate question. But at a minimum, I think he has to play  
14 the whole answer, at least. He cut it off in the middle of the  
15 answer.

16 **MR. PORRITT:** Well, we played the relevant portion of  
17 the testimony, Your Honor.

18 **THE COURT:** Pardon?

19 **MR. PORRITT:** We played the relevant portion of the  
20 testimony, Your Honor.

21 **THE COURT:** Well, for completeness purposes, why don't  
22 you play through the full answer that goes over to 184, Line 1.

23 (Portion of video played, not reported)

24 **BY MR. PORRITT**

25 **Q** Now, going back to Exhibit 8, the "Funding secured" tweet.

**MUSK - DIRECT / PORRITT**

1 (Document displayed)

2 **Q** The "Funding secured" there refers to the PIF, correct?

3 **A** Um, not just the PIF. I think, again, a very important  
4 point for the jury that I want to emphasize is that I had --  
5 I'm the majority shareholder of SpaceX, which is the most  
6 valuable private company in the United States. And so the  
7 "secured" referred both to PIF, but also the fact that I had  
8 SpaceX stock to also secure the transaction.

9 This is an extremely important point. And you seem to be  
10 deliberately avoiding it.

11 **Q** Well, we can explain why I'm avoiding it, perhaps.

12 **MR. PORRITT:** Your Honor, I would like to show a clip  
13 of the second deposition taken of Mr. Musk on November 5, 2021,  
14 Lines -- Page 189, Lines 5 through 16.

15 **MR. SPIRO:** Your Honor, for the rule of completeness,  
16 we would ask that Mr. Musk's first deposition testimony,  
17 Lines -- Page 226, Lines 1 through 8 and Page 227, Lines 1  
18 through 11, the testimony from August of 2018 to --

19 **THE COURT:** You can bring that up on direct. So we're  
20 not going to read from other -- if there's something proximate  
21 to this page, I'll allow it, but not other statements. You can  
22 bring that up on your questioning.

23 So 189, Line --

24 **MR. PORRITT:** -- 5 through 16.

25 (Document displayed to the Witness)

**MUSK - DIRECT / PORRITT**

1           **THE COURT:** All right.

2           (Witness examines document)

3           (Document taken off display)

4           **MR. SPIRO:** Just a moment, Your Honor, so I can pull  
5 up the other deposition.

6           **THE COURT:** This is the November 5th, right?

7           **MR. PORRITT:** Correct, Your Honor. May I proceed?  
8 Sorry, are we ready?

9           **THE COURT:** Yeah, I was waiting --

10          **MR. PORRITT:** Oh, okay. Thank you. Please do.

11          (Portion of video played, not reported)

12   **BY MR. PORRITT**

13   **Q**     Now, when I asked you those questions back in November,  
14 you were under oath, correct?

15   **A**     Correct.

16   **Q**     And you were under the same oath you've taken here today,  
17 correct?

18   **A**     Correct.

19   **Q**     All right. And after that question, you made no reference  
20 at all to SpaceX, correct?

21   **A**     Correct. However --

22   **Q**     Okay. Thank you.

23   **A**     Okay, what --

24           **THE COURT:** Well, your attorney will --

25           **THE WITNESS:** Okay.

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1           **THE COURT:** -- let you elaborate.

2           **BY MR. PORRITT**

3           **Q**     You were asked what the -- you were asked if the reference  
4     to "Funding secured" referred to the Saudi Arabia PIF, and you  
5     said: Yes, correct, under oath in November, 2021. Correct?

6           **A**     I think the -- the first deposition with the SEC, what,  
7     three years earlier, is the one that should be viewed as the  
8     one that is closest in time and more accurate than the one that  
9     occurred three years later.

10          **THE COURT:** All right; I need you to answer this  
11     particular question.

12          **THE WITNESS:** Yes.

13          **THE COURT:** Your attorney will be able to bring out  
14     the other one.

15          **THE WITNESS:** Sorry, Your Honor. Yes, yes.

16          **BY MR. PORRITT**

17          **Q**     Okay. So you did not reference SpaceX when it came to  
18     asking what "Funding secured" referred to back in November,  
19     2021, under oath. Correct?

20          **A**     Not --

21          **MR. SPIRO:** Objection. Mischaracterizes his  
22     testimony.

23          **THE COURT:** Well, he's already answered yes to the  
24     basic question, so I think we can move on.

25          **MR. PORRITT:** All right.

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1 **BY MR. PORRITT**

2 **Q** And you hadn't spoken with PIF between July 31st and  
3 August 7th, correct?

4 **A** I don't recall --

5 **Q** Had not, correct?

6 **A** Sorry?

7 **Q** I'll repeat the question.

8 **A** My apologies. Could you speak closer to the microphone?

9 **Q** You had not spoken to the PIF between July 31st and  
10 August 7th, correct?

11 **A** I don't recall exactly what happened between exact dates  
12 five years ago.

13 **Q** Okay.

14 **MR. PORRITT:** Now, at this point, if we could  
15 introduce Exhibit 121, Your Honor. It's not yet admitted into  
16 evidence.

17 (Document displayed to the Witness)

18 **THE COURT:** Okay.

19 **MR. PORRITT:** Show that to the witness?

20 **THE WITNESS:** Yes.

21 **BY MR. PORRITT**

22 **Q** Do you see that?

23 **A** See which part of it?

24 **Q** Well, first of all, the document itself, these are text  
25 messages taken from your phone, isn't that correct?

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1     **A**     Yes.

2             **MR. PORRITT:** At this point I move them into evidence,  
3 Your Honor.

4             **MR. SPIRO:** Objection.

5             **THE COURT:** All right. I overrule the objection,  
6 except that the parties are going to work on redacting those  
7 portions that were not relevant.

8             **MR. PORRITT:** Correct, Your Honor. And this -- we  
9 have redacted out every communication that is not relevant to  
10 the transaction at issue. It contains communications between  
11 Mr. Musk, members of the board, Tesla employees, and his  
12 advisers.

13            **THE COURT:** All right. So what we have -- let me just  
14 make sure I have the same document as you do -- is this a  
15 15-page document now? Is that correct?

16            **MR. PORRITT:** Yes, I believe so.

17            Yes, that's correct, Your Honor.

18            **THE COURT:** And you've redacted things other than  
19 communications concerning the subject matter of this action.

20            **MR. PORRITT:** Correct, Your Honor, as well as personal  
21 identifying information, et cetera.

22            **MR. SPIRO:** We have not had an opportunity to look at  
23 the redactions that plaintiff is suggesting. If he wants to  
24 point to certain specific texts.

25            I don't want to interrupt his examination, but we don't

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1 have a blank agreement on this specific document.

2 **THE COURT:** All right. Well, let's do this. I will  
3 allow you to utilize this in your examination. But in terms of  
4 filing the final document, I would like the parties to agree  
5 that this is -- the redactions are appropriate.

6 **MR. PORRITT:** Very good, Your Honor.

7 **THE COURT:** Okay? So I'm going to admit, subject to  
8 redactions, clarifying and agreement on redactions.

9 **MR. PORRITT:** Very good, Your Honor, I think we will  
10 reach agreement. It's just a question of timing.

11 **THE COURT:** Okay.

12 (Reporter clarification)

13 (Trial Exhibit 121 conditionally received in evidence.)

14 **MR. PORRITT:** May I publish to the jury, Your Honor?

15 **THE COURT:** Yes.

16 **MR. PORRITT:** Thank you.

17 **BY MR. PORRITT**

18 **Q** So if I can refer you to a text message you received from  
19 Deepak Ahuja -- on August 7th, correct? Well, let's just see.

20 **THE COURT:** Do you have a page number, Counsel, so we  
21 can find that?

22 **MR. SPIRO:** And if it would be okay with the Court, if  
23 we could see the messages first before they are published?

24 **MR. PORRITT:** It's Page 4, 121, 4, Your Honor.

25 **THE COURT:** All right. I'm not sure how you can

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1 segregate out just that section. You have a copy, right, of  
2 this exhibit right now, as redacted? I assume?

3 Has that been provided to opposing counsel, Mr. Porritt?

4 **MR. PORRITT:** Yes, it has, Your Honor. It was  
5 provided last night.

6 **THE COURT:** All right. So I'm not going to interrupt,  
7 but if you find something inappropriate, you can make your  
8 objections known at that time.

9 **MR. SPIRO:** Thank you.

10 **THE COURT:** Go ahead.

11 **MR. PORRITT:** All right. Thank you.

12 **BY MR. PORRITT**

13 **Q** Mr. Musk, do you see that text highlighted in front of  
14 you, August 7th?

15 (Document displayed)

16 **A** Yes.

17 **Q** Okay. And just for the benefit of the jury, the time  
18 there at 17:23, that's seven hours ahead of Pacific time.

19 **A** Okay.

20 **Q** You recall, on the morning of August 7th, receiving this  
21 text from Deepak Ahuja?

22 **A** It's five years ago, but I'm just going to -- this is --  
23 this is a text that was received, yes.

24 **Q** Okay. And you recall that Deepak Ahuja and other members  
25 of -- other Tesla executives were going to draft an email to

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1 Tesla employees to be published about the going-private,  
2 correct?

3 **A** Yes.

4 **Q** And that was shortly after your tweet was published,  
5 correct?

6 **A** Yes.

7 **Q** Okay. And then after this text, Mr. Ahuja, Sarah O'Brien,  
8 Todd Maron, and Dave Arnold drafted an email for you to send to  
9 Tesla employees, and sent you a draft. Isn't that correct?

10 **A** Yes, yes.

11 **Q** Okay. And you expected there would be questions following  
12 your August 7th tweet, correct?

13 **A** Yes.

14 **Q** Okay. Yet, you didn't send out any more detailed tweets  
15 after your initial tweet. Correct?

16 **A** I think there were later tweets, but I'm not sure what the  
17 exact time was.

18 **THE COURT:** You should give a time frame, Counsel.

19 **MR. PORRITT:** Thank you. I'll get there, Your Honor.  
20 That was a poorly-phrased question. I apologize.

21 **BY MR. PORRITT**

22 **Q** But,, you did have -- at the time you issued your first  
23 tweet, you didn't have already several other tweets ready to go  
24 with additional information, did you?

25 **A** Correct.

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1 Q Okay. Did you look at what was happening to the stock  
2 price after your August 7th tweet?

3 A I was in the factory working on production problems, so I  
4 was not following the stock price.

5 Q Okay. Did you look -- over the days following your tweet,  
6 did you ever look at what was happening to the stock price?

7 A I think, at times.

8 Q Okay. But not all of the time?

9 A No, I'm literally in the factory working on production  
10 issues with the team.

11 Q So if I can refer you to Exhibit 9., it was previously  
12 admitted. This is one of the subsequent tweets I think you're  
13 referring to.

14 (Document displayed)

15 Q Do you see that?

16 A I do.

17 Q Okay. Now, you say here (As read):

18 "I don't have a controlling vote now & wouldn't  
19 expect any shareholder to have one if we go private."

20 Correct?

21 A Correct.

22 Q All right. At this point. Did you have any idea about  
23 what ultimate percentage any individual participant in the  
24 going-private transaction may end up owning?

25 A Not specifically.

## MUSK - DIRECT / PORRITT

1 Q So one could own 51 percent?

2 A I thought that was very unlikely. That's why I said I  
3 wouldn't expect a shareholder to have one. I'm not saying that  
4 I wouldn't -- that they wouldn't, but that it would just simply  
5 not be my expectation.

6 Q And then if we can refer to Exhibit 10.

7 (Document displayed)

8 Q You see there, your tweet there refers to the special  
9 purpose vehicle or special purpose fund again?

10 A Yes.

11 Q Okay. Again, you still had no legal advice on this point,  
12 correct, when you issued this tweet?

13 A No, but I was familiar with how SpaceX is structured, and  
14 we had legal advice at SpaceX. And so I thought it would be a  
15 similar structure to SpaceX.

16 Q So you were relying on the SpaceX legal advice when you  
17 were issuing this tweet?

18 A Essentially, yes.

19 Q And you thought that retail investors would be able to  
20 invest directly in this special purpose fund which would own  
21 100 percent Tesla stock, is that correct?

22 A Not that it would necessarily own 100 percent of Tesla  
23 stock, but I was aware that there were and are many special  
24 purpose vehicles that own SpaceX stock, and I thought the  
25 similar -- something similar could work for Tesla.

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1 Q So, but you thought a special purpose vehicle would only  
2 own Tesla stock, correct?

3 A Not necessarily, no.

4 Q So you had in mind that they would own shares in other  
5 companies?

6 A Yes.

7 Q How is that equivalent to holding -- allowing Tesla  
8 private shareholders to hold their Tesla shares in a  
9 going-private transaction?

10 A Well, they would still own, indirectly, Tesla shares.

11 Q Okay. Do the special purpose vehicles in SpaceX own  
12 shares in companies other than SpaceX or SpaceX-related  
13 companies?

14 A I don't know what all of the special purpose vehicles do.  
15 I think some do just own SpaceX stock.

16 Q And if you could go to Exhibit 11.

17 (Document displayed)

18 Q You tweeted this at 11:13 a.m., isn't that correct?

19 A Yes.

20 Q Okay. Now, at this point you knew that Tesla corporate  
21 communications, including their general counsel -- Todd Maron  
22 is Tesla's general counsel, correct?

23 A Yes.

24 Q Was, at that time?

25 A Yes.

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1 Q Right. So you knew that the general counsel, global  
2 communications, the CFO is drafting an email which you knew was  
3 going to be published, correct?

4 A Yes.

5 Q Okay. Why then are you tweeting out these statements --  
6 incomplete statements about the going-private transaction,  
7 rather than waiting for that drafted statement?

8 A I wanted to be clear that my intent was to do the right  
9 thing for Tesla shareholders, and not try to force them to sell  
10 if they wish to stay part of Tesla. I was trying to do the  
11 right thing for shareholders.

12 Q Right, but that's going to be communicated in this email  
13 that's being drafted for you by Tesla, correct?

14 A Well, I was worried that shareholders would think that I  
15 was trying to exclude them, and I wanted to be clear that I was  
16 trying to support them, not exclude them.

17 Q Right, but my question is directed at -- you testified  
18 yesterday how Tesla -- how Twitter can't always be  
19 comprehensive, correct?

20 Do you recall that testimony?

21 A The character limitation is 240 characters, yes.

22 Q Right. And you're having a longer communication drafted  
23 for you by Tesla general counsel, Tesla communications team,  
24 Tesla financial team. Correct?

25 A Yes.

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1 Q And that longer statement can address this question about  
2 shareholder participation in a private Tesla, correct?

3 A Well, it can go into a lot more detail. But I was just  
4 concerned that shareholders thought that I would abandon them,  
5 and I wanted to be clear that I would do my best to support  
6 them.

7 Q Well, you knew this -- 11:13 a.m., I mean, you knew this  
8 statement was imminent, that your team was working on it,  
9 correct?

10 A Yes.

11 Q So why not just wait and give all the details to all the  
12 investors at once in a properly-drafted document, rather than  
13 sending out these incomplete tweets?

14 A I just -- I wanted shareholders to know that I would do my  
15 best to support them. That seemed like an important thing to  
16 me to convey to the public.

17 Q Now, by this stage, 11:13 a.m., Nasdaq had actually halted  
18 trading in your stock, correct?

19 A I'm not certain of the time. I was in the factory working  
20 on production problems.

21 Q So you were sending these tweets while you were on the  
22 factory floor, working on other issues at Tesla. Correct?

23 A I think this one was done perhaps, I think, just before I  
24 started working on the production issues.

25 Q Okay.

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1     **A**     Because it -- it looks like it was -- the timing would be  
2     roughly when I would be entering the factory in Nevada.

3     **Q**     But you are aware that Nasdaq halted trading in Tesla  
4     shares in the morning, you know, late morning Pacific time,  
5     August 7th, 2018, correct?

6     **A**     I'm not sure of the exact timing.

7     **Q**     Okay. You recall Nasdaq halting trading in Tesla shares,  
8     correct?

9     **A**     At some point in the day, I did. I think later in the day  
10    I learned that.

11   **Q**     Okay.

12           **MR. PORRITT:** Can you pull up Exhibit 12, please.

13           (Document displayed)

14   **BY MR. PORRITT**

15   **Q**     Do you recognize this as the email to Tesla employees that  
16    was drafted for you by Tesla?

17   **A**     Yes.

18   **Q**     Okay. This doesn't say anything about funding, does it?

19   **A**     It does not appear to say anything specific about funding.

20   **Q**     Okay. And if I could refer you to what's the third  
21    paragraph from the bottom on Exhibit 12.

22           You say there (As read):

23           "Finally, this has nothing to do with  
24           accumulating control for myself. I own about  
25           20 percent of the company now, and I don't

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1           envision that being substantially different  
2           after any deal is completed."

3           Do you see that?

4   **A**     Yes. Although just to correct that, the 20 percent is  
5   shares, not including options. Options would make it a higher  
6   number.

7   **Q**     Okay. Now, if you used your SpaceX shares to finance some  
8   of the going-private transaction, that would increase your  
9   percentage ownership in Tesla, isn't that correct?

10  **A**     Yes.

11  **Q**     Okay. This (Indicating) says nothing about you using  
12  SpaceX shares to finance any transaction, going-private  
13  transaction for Tesla, does it?

14  **A**     This does not speak to the financing. This particular  
15  email does not reference financing details.

16  **Q**     Okay. And in fact, the immediate paragraph above that  
17  says:

18           "The intention is not to merge SpaceX and  
19           Tesla."

20           Correct?

21  **A**     Yes.

22  **Q**     So, if anything, you are trying to separate the concept of  
23  SpaceX from the going-private with Tesla, isn't that correct,  
24  with this email?

25  **A**     I just wanted to be clear that I was not attempting to

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1 merge the companies.

2 Q All right. Is there any information in this email that  
3 would suggest that you might use SpaceX shares to finance a  
4 going private of Tesla?

5 A This email does not speak to the details of the financing.

6 Q Okay. And then if we can go to Exhibit 13.

7 (Document displayed)

8 A That's not me giving away the Ethereum, by the way.

9 Q So you sent this tweet at 12:36 p.m. Do you see that? On  
10 7th of August?

11 A Yes.

12 Q Okay. And that's -- the link there to "Taking Tesla  
13 Private," that's the link to Exhibit 12 that we were just  
14 looking at? Isn't that correct?

15 A Yes.

16 Q So the earlier -- the earlier tweets we looked at, 11:08,  
17 et cetera, they were just one hour and 24 minutes before -- 28  
18 minutes before this. Correct?

19 A I think so.

20 Q All right. During the time when the Tesla shares were not  
21 trading on Nasdaq, correct?

22 A I -- I don't know what the exact timing of that was.

23 Q Okay. And you tweet out:

24 "Investor support is confirmed. Only reason

25 why this is not certain is that it's

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1 contingent on a shareholder vote."

2 Isn't that correct?

3 **A** Yes.

4 **Q** All right. And you had not spoken -- you still had not  
5 spoken to any investor other than PIF about taking Tesla  
6 private in 2018. Correct?

7 **A** Um, and Larry Ellison, who is a major investor.

8 **Q** Right. That was in 2017, correct?

9 **A** Yes.

10 **Q** All right. Thank you.

11 And with neither PIF, nor Larry Ellison in 2017, have you  
12 mentioned 420, correct?

13 **A** Correct.

14 **Q** All right. And there was no formal proposal at this point  
15 for the board to consider, let alone the shareholders to vote  
16 on at this time, correct?

17 **A** I'm not sure what you mean by "formal proposal," but I had  
18 certainly -- I certainly viewed the email that I sent to the  
19 board as a formal proposal.

20 **Q** Well, you agreed with me earlier when we were looking at  
21 the August 3rd board minutes, you agreed that it was not a  
22 formal proposal that the board could evaluate or analyze. Do  
23 you recall that testimony?

24 **A** Well, I'm not sure what you mean by the word "formal," but  
25 if -- I certainly proposed to the board taking Tesla private

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1 days before this.

2 **Q** Right. The board said: This isn't a formal proposal that  
3 we can analyze and evaluate. Do you remember that testimony?

4 **A** Yes.

5 **Q** Okay. And you agreed with that, correct?

6 **A** I suppose so.

7 **Q** All right, so that's -- there wasn't a formal proposal  
8 that even the board of Tesla with all its information could  
9 analyze and evaluate as of August 7, 2018. Isn't that correct?

10 **A** I think you're -- that the question is -- has a lot of --  
11 your question has a lot of assumptions in it.

12 **Q** Could you please just answer the question, Mr. Musk?

13 **MR. SPIRO:** If the witness can't answer the question  
14 as phrased, he can --

15 **THE COURT:** Well, if you can answer the question as  
16 phrased, you should answer it. If you can't, then you  
17 (Indicating) will have to rephrase your question.

18 **THE WITNESS:** If -- if you could simplify the question  
19 so it does not have lots of assumptions in it.

20 **BY MR. PORRITT**

21 **Q** As of August 7th, 2018, there was no formal proposal for  
22 the board of Tesla that the board of Tesla could evaluate or  
23 analyze. Isn't that correct?

24 **A** There was a proposal. I think we're getting stuck on this  
25 point of formal and not formal. But I would certainly consider

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1 the proposal that I made earlier to the board some days earlier  
2 to be a serious proposal, and a very real one. Yeah.

3 **Q** Well, you previously agreed -- I'm tired of going around  
4 this. You previously agreed that it wasn't a formal proposal  
5 that the board --

6 **MR. SPIRO:** Objection.

7 **THE COURT:** You know, it might be time better spent if  
8 you draw -- if you -- your questioning was based on the minutes  
9 of the meeting. So I don't remember now whether the words were  
10 "formal proposal" or "detailed proposal."

11 So to be accurate, --

12 **MR. PORRITT:** Let's do that, Your Honor.

13 **THE COURT:** -- why don't you go back to -- let's find  
14 the minutes.

15 **MR. PORRITT:** All right. If we can go back to  
16 Exhibit 83, Page 3.

17 (Document displayed)

18 **BY MR. PORRITT**

19 **Q** And I will correct my question. The email wasn't a  
20 detailed proposal regarding a going-private transaction that  
21 could be properly analyzed or evaluated by the board. Isn't  
22 that correct?

23 **A** I'm just reading this.

24 (Witness examines document)

25 **A** Yeah, that's -- it says "detailed proposal," not "formal

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1 proposal."

2 **THE COURT:** So the question is whether you agree with  
3 that.

4 **THE WITNESS:** Sorry?

5 **THE COURT:** The question is whether you agree with  
6 that. If the word is "detailed proposal."

7 **THE WITNESS:** Um, it -- I guess it would not be a  
8 detailed proposal, but it was, nonetheless, a formal and  
9 serious -- oh, not -- sorry, not a formal -- it was nonetheless  
10 a serious and very real proposal.

11 **MR. PORRITT:** If we can -- if I could introduce  
12 Exhibit 337, show that to the witness.

13 **THE COURT:** All right. Do you want to show it to the  
14 witness first?

15 **MR. PORRITT:** Yes, please, Your Honor. It is not in  
16 evidence yet.

17 (Document displayed to the Witness)

18 **BY MR. PORRITT**

19 **Q** Do you see Exhibit 337, Mr. Musk?

20 **A** Yes, yes.

21 **Q** Okay. And this is an email that -- do you recognize  
22 Exhibit 337?

23 **A** I mean, I see it. Again, it's -- I get to -- the  
24 Niagara -- my email box is like Niagara Falls, so I get a lot  
25 of emails. But I can certainly read this and understand it.

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1 **Q** Okay. And this is an email you received from Deepak  
2 Ahuja, --

3 **A** Yes.

4 **Q** -- on August 7, 2018?

5 **A** Yes.

6 **MR. PORRITT:** Okay. Move for admission, Your Honor?

7 **THE COURT:** All right. I have already overruled the  
8 objection to it in my ruling that I issued this morning.

9 **MR. PORRITT:** Very good, Your Honor. Okay.

10 **THE COURT:** So it's admitted.

11 **MR. PORRITT:** It's admitted, thank you. If you could  
12 publish that to the jury, please.

13 (Trial Exhibit 337 received in evidence.)

14 (Document displayed)

15 **BY MR. PORRITT**

16 **Q** So you see Exhibit 337 in front of you?

17 **A** Um, yes.

18 **Q** And Mr. Ahuja says (As read):

19 "We are getting a lot of enquiries from  
20 investors, SEC and the media to better  
21 understand the comment 'Funding secured.'"

22 Do you see that?

23 **A** Yes.

24 **Q** All right. Do you recall at this point taking any steps  
25 to address these inquiries to better understand the comment

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1 "Funding secured"?

2 A That we were getting inquiries? Well, so --

3 Q You didn't take any steps to address -- to provide further  
4 details about funding at this point, did you, to address these  
5 inquiries?

6 A I mean, this is all happening in a very short period of  
7 time on August 7th. As I mentioned, I was in the factory,  
8 working on production problems. So I --

9 Q Sorry. You didn't direct Mr. Ahuja to provide additional  
10 information to investors about "Funding secured," did you?

11 A Um, not on that day, no.

12 Q Okay. And we'll see later on, in fact, you didn't make  
13 any disclosure regarding funding for another six days, correct,  
14 until August 13, 2018?

15 A I don't recall the exact dates.

16 Q And Mr. Ahuja was forwarding an email from Mr. Koney,  
17 correct? Do you see that, at Jennison?

18 A Yes.

19 Q And Jennison was a significant shareholder in Tesla, or  
20 was at the time?

21 A That they -- I'm not sure of the exact holdings for the  
22 word "significant," but they were a shareholder.

23 Q Okay. And Mr. Koney says he wants to know if there's some  
24 kind of commitment letter, not just a verbal agreement to  
25 provide the funding to go private. This is a very serious

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1 matter, and saying it on a tweet is just not sufficient.

2 Do you see that?

3 **A** Yes.

4 **Q** All right. Does this affect your approach to disclosures  
5 regarding the going-private transaction, seeing this concern  
6 from Mr. Koney?

7 **A** Did it affect my disclosures?

8 **Q** Yes.

9 **A** Well, we did follow this up with more detail.

10 **Q** Okay. On August 13th, 2018. Correct?

11 **A** Um, I'll take your word for it that that's the date.

12 **Q** Okay. So for the -- until you provided further  
13 information, you just left investors like Mr. Koney and  
14 Jennison in the dark, correct?

15 **MR. SPIRO:** Objection. And he knows that  
16 mischaracterizes it.

17 **THE COURT:** Overruled.

18 You can answer the question.

19 **THE WITNESS:** Well, I did not think it would be the  
20 right thing to do to provide information to only some investors  
21 but not others.

22 **BY MR. PORRITT**

23 **Q** Okay. You didn't think about making -- you didn't think  
24 about making another additional public statement until  
25 August 13th, correct?

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1     **A**     I probably -- I probably thought about it, but, you know,  
2     I -- so yeah, I probably thought about it, but I guess  
3     August 13th was probably the next significant communication.

4     **Q**     And then, so the four -- there's three more trading days,  
5     8th, 9th and 10th, between that and your additional  
6     information, correct?

7     **A**     Yes.

8     **Q**     Okay. And you provided no additional information about  
9     the source of funding on the 8th, the 9th or the 10th, correct?

10    **A**     I -- I did not. Again, I said I was considering it, not  
11    that we -- I didn't say we were going private. I said I was  
12    considering going private. Not that we were going private.

13    **Q**     And then after the tweet on August 7th, you had a  
14    conversation with Anthony Gracias about the tweets. Do you  
15    recall that?

16    **A**     Not precisely.

17    **Q**     Okay. Do you recall having a conversation with  
18    Mr. Gracias after you published the tweet on August 7, 2018,  
19    about the tweet?

20    **A**     We had many conversations. It's possible we had one about  
21    the take-private.

22    **Q**     Do you recall Mr. Gracias telling you the board wanted you  
23    to give you -- you to give them a heads-up about tweets such as  
24    the -- your August 7th tweets about going private? Do you  
25    recall that conversation?

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1   **A**     I don't recall that exact conversation. But as I  
2   mentioned earlier, the board would be a counterparty in this  
3   situation, so it actually wouldn't be correct to collude with  
4   the counterparty when making a bid.

5   **Q**     Mr. Gracias didn't tell you that the board expected notice  
6   ahead of time before you issued any tweet containing  
7   market-moving information?

8   **A**     Well, again, it's sort of a weird thing to consider,  
9   because as the bidder, I'm the counterparty. I cannot  
10  discuss -- it -- I cannot collude with the board in a  
11  transaction like this because the board represents the company  
12  and I represent the -- the take-private bid. So it would be  
13  improper to collude with the board in this manner.

14           **MR. PORRITT:** Your Honor, to refresh Mr. Musk's  
15  recollection, I would like to refer him to his first  
16  deposition, which I think he's already referred to as his SEC  
17  testimony. Page 248, Line 7 to 249, Line 9.

18           **THE COURT:** Do you want him to read that to refresh  
19  his recollection?

20           **MR. PORRITT:** Yes, please.

21   **BY MR. PORRITT**

22   **Q**     If you could read that to yourself, Mr. Musk?

23   **A**     Which line? Both pages?

24   **Q**     248, Line 7 through to 249, Line 9.

25   **A**     Okay. I will read it.

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1 (Witness examines document)

2 **A** He has indeed --

3 **THE COURT:** You don't have to comment on it.

4 **THE WITNESS:** Okay. Sorry.

5 **THE COURT:** He asked you to read it to refresh your  
6 memory and --

7 **BY MR. PORRITT**

8 **Q** I think I know the answer to that question. Does that  
9 refresh your recollection, Mr. Musk?

10 **A** It does.

11 **Q** Do you recall having any conversation with Mr. Gracias  
12 after the August 7th tweet?

13 **A** Yes.

14 **Q** On Tuesday afternoon, do you think?

15 **A** I think so. Yes.

16 **Q** And he tells you that you should put more thought into --

17 **MR. SPIRO:** Objection.

18 **BY MR. PORRITT**

19 **Q** Do you recall Mr. Gracias telling you that he thinks you  
20 should put more thought into your tweets?

21 **A** Um, yes.

22 **Q** And make sure the board has a heads-up before tweeting?  
23 Do you recall him telling you that?

24 **MR. SPIRO:** Your Honor, if the witness's memory has  
25 been refreshed, typically what would occur would be that the

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1 document would now not be in front of him.

2 **THE COURT:** Yes.

3 (Document taken off display)

4 **BY MR. PORRITT**

5 **Q** You can put the documents to one side now, Mr. Musk.

6 **THE COURT:** Close the document now.

7 **THE WITNESS:** It's closed.

8 **THE COURT:** So now you should testify as to your  
9 memory, if it's refreshed.

10 **THE WITNESS:** Will do.

11 **THE COURT:** Okay. Go ahead and ask the question.

12 **BY MR. PORRITT**

13 **Q** All right. You recall Mr. Gracias telling you that you  
14 should think more before tweeting, and give the board more of a  
15 heads-up before tweeting?

16 **A** Yes.

17 **Q** Okay. And that was for tweets that contained material  
18 Tesla information?

19 **A** Yes.

20 **Q** Okay. And that would be anything that would be of a  
21 potentially market-moving nature? Would that be correct?

22 **A** Yes.

23 **Q** Okay.

24 **THE COURT:** I don't know if there is a convenient  
25 break point. Our time is a little thrown off this morning, but

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1 within the next several minutes --

2 **MR. PORRITT:** Actually, now would be an excellent  
3 time, Your Honor.

4 **THE COURT:** All right. Why don't we take our  
5 scheduled break at this time for 20 minutes.

6 Just a reminder, please do not discuss this case with  
7 anyone, do not read or listen to any reportage of this case, do  
8 not attempt to do any research on your own, and do not form any  
9 opinions until this case is submitted to you for deliberation.

10 See you in 20 minutes.

11 (The Witness exits the courtroom)

12 **THE COURT:** Okay, you can show the jury out.

13 **THE COURTROOM DEPUTY:** All rise for the jury.

14 (The Jury exits the courtroom)

15 (The following proceedings were held outside of the  
16 presence of the Jury)

17 **THE COURT:** Mr. Porritt, do you have a forecast of how  
18 much longer your direct will be?

19 **MR. PORRITT:** I'm trying to move as quickly as I can,  
20 believe it or not, but I would estimate another 25 minutes,  
21 perhaps, something in that order of magnitude.

22 **THE COURT:** All right. Any estimate on your part?

23 **MR. SPIRO:** Usually about an hour, something like  
24 this.

25 **THE COURT:** Okay.

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1 All right, then I'm going to look at the issues that we  
2 talked about, because Exhibit 80 has not come up yet, so I'll  
3 have a chance to look at it.

4 **MR. SPIRO:** Thank you, Your Honor.

5 **MR. PORRITT:** Very good, Your Honor.

6 (Recess taken from 11:04 a.m. to 11:28 a.m.)

7 (The following proceedings were held outside of the  
8 presence of the Jury)

9 **THE COURTROOM DEPUTY:** Please remain seated. Court is  
10 back in session.

11 **THE COURT:** All right. Before we bring the jury back,  
12 I'm going to give you my ruling on Exhibit 80.

13 The objection is overruled. I'm going to allow that  
14 document to come in under 807.

15 As far as authenticity goes, this is not a case where some  
16 lawyer went out and got some third-party documents on medical  
17 examination of the, purported medical examination of the  
18 plaintiff. This is a document submitted in response to  
19 requests, document requests or an inquiry by a governmental  
20 agency, the SEC, submitted by the attorney for the party  
21 providing that information. And, and that's different from  
22 defense counsel trying to verify some medical documents that --  
23 of a party to which -- for which that attorney does not  
24 represent. So this is admissible.

25 In terms of the authenticity requirement, I do find that

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1 the *FTC v. Willms* case is on point and well-reasoned.

2 With respect to the question of admissibility under 807,  
3 for hearsay purposes, I do find that, number one, that proper  
4 notice was given, even though we don't know the precise name of  
5 the declarant. It's obvious that it's somebody from PIF, so  
6 knowing that precise name is not going to be dispositive.

7 I think the real question is whether the statement is  
8 supported by sufficient guarantees of trustworthiness after  
9 considering the totality of circumstances under which it was  
10 made, and evidence, if any, corroborating the statement.

11 I find in this case that there is corroboration in terms  
12 of the fact of the meeting, the date of the meeting, who was  
13 present. And, and the topic matters that were discussed aligns  
14 with that.

15 It is true that courts have identified a number of other  
16 factors such as whether or not the statement was given under  
17 penalty of perjury, under oath; whether the declarant was  
18 subject to cross-examination. The time, any time lag between  
19 the time the statements were made and the events at issue, and  
20 -- however, no one factor is dispositive.

21 I find that in this instance there is enough corroboration  
22 to warrant its admissibility under 807, given what I just said;  
23 and given the fact that I don't find an obvious incentive for  
24 the declarant in this case, whoever wrote those minutes for the  
25 PIF, to have been accurate on some counts and inaccurate on

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1 other counts.

2 The idea that this was done to get the SEC off their backs  
3 or not respond, I don't find that persuasive, especially given  
4 the fact, as defendants already acknowledged, the PIF is not  
5 within the jurisdictional or the subpoena power of the SEC, in  
6 any event. And if they really didn't want to cooperate, they  
7 probably couldn't be made to cooperate, is my guess.

8 So whoever wrote those notes, I don't see why there's an  
9 incentive to have a good portion of that accurate and some  
10 portion of it not accurate.

11 Now, that may be the case. And that can be argued. But  
12 for purposes of 807, I find that there are sufficient  
13 guarantees of trustworthiness and that its probative value is  
14 very substantial here. And it is more probative on the point  
15 for which it is offered than any other evidence that the  
16 proponent can obtain through reasonable efforts, given the  
17 circumstances of that particular meeting.

18 So the objection is stated for the record, but that's my  
19 ruling.

20 **MR. SPIRO:** Your Honor, just to clarify just a couple  
21 of quick points. First is I want to make sure that the Court  
22 -- for appellate purposes I want to make sure this is clear in  
23 the record -- did receive our memorandum and --

24 **THE COURT:** Yes.

25 **MR. SPIRO:** Okay. And then, is the Court finding in

## PROCEEDINGS

1 its assessment of this document that there would be -- the  
2 Court sees no benefit of the right of the cross-examination,  
3 on --

4 **THE COURT:** I didn't say that. I didn't say that. I  
5 said that's one factor. That's not dispositive. Indeed, there  
6 are cases -- there's one case from the Central District of  
7 California, expressly addresses the lack of cross-examination.  
8 Says: Well, that's not dispositive; there are scores of other  
9 cases where that has been admitted; it is one factor.

10 I'm not saying this was a slam-dunk at all. This is,  
11 frankly, a fairly close question.

12 **MR. SPIRO:** And then the final question that I have,  
13 Your Honor, at least that I have to ask at this juncture is,  
14 there's obviously hearsay within hearsay. I would ask that the  
15 document, where it contains hearsay within hearsay, be  
16 redacted. If they want Mr. Musk's statement in -- but there  
17 are statements of other individuals.

18 **THE COURT:** Well, the other individuals, I take it  
19 that that's for the purpose of effect on the listener,  
20 Mr. Musk's knowledge and state of mind.

21 **MR. PORRITT:** Correct, Your Honor. And completeness,  
22 of course, too, Your Honor. Can't have one side of the  
23 conversation.

24 **MR. SPIRO:** Yeah. That, that wouldn't satisfy 807 or  
25 any hearsay exception. So I don't understand that, what

## PROCEEDINGS

1 plaintiff's counsel is saying. But --

2           **THE COURT:** Well, 807 addresses the document, itself,  
3 whether -- it doesn't address the secondary embedded hearsay.  
4 But the embedded-hearsay problem is, one, once you admit the  
5 document, it contains statements of party opponent which is  
6 admissible under 801. And, to the extent that there are  
7 statements of others in the room where Mr. Musk was allegedly  
8 present, that goes to state of mind, and is not being used for  
9 the trust of the matter asserted, and therefore, it is also  
10 admissible under 801.

11           **MR. SPIRO:** Right. But in this document, Your Honor,  
12 there are statements that are done that are not  
13 question-and-answer. And there's a statement at the end of the  
14 document, there's no indication that anybody even heard it, or  
15 that it was said to anybody who is a party opponent. Right?

16           So there would be no reason to think that it is -- again,  
17 I don't think the effect on the listener or the completeness or  
18 any of these other things have any pertinence here.

19           **THE COURT:** Okay. Well, I find otherwise. The  
20 objection is overruled. I will issue a formal written ruling  
21 to memorialize my findings.

22           So thank you, Counsel. I appreciate the last-minute  
23 briefing on this.

24           **MR. PORRITT:** We move to admit at this point,  
25 Your Honor, this exhibit.

1           **THE COURT:** All right. I'll admit it. 80 will be  
2 admitted.

3           (Trial Exhibit 80 received in evidence.)

4           **MR. SPIRO:** And just for the record, same objections.  
5 403, hearsay, right to confront the witness. And all the  
6 objections we raised.

7           **THE COURT:** So noted. Thank you.

8           One word, Mr. Porritt. If you could make sure you're  
9 close to the microphone and speak --

10          **MR. PORRITT:** Slowly.

11          **THE COURT:** If you could speak more slowly and  
12 clearly, because you have a tendency a little bit to kind of  
13 "smerge" your words together; it's a little bit hard to hear.

14          **MR. PORRITT:** I apologize. Yes. New Zealanders have  
15 a habit of doing that, I'm afraid. And I feel the clock  
16 burning a mark in my back. So I'm trying to move this along as  
17 quickly as I can.

18          **THE COURT:** All right. So, let's bring the jury back  
19 in.

20          If we could have the witness resume the stand as the jury  
21 is returning.

22          (The Witness resumes the witness stand)

23          (The following proceedings were held in the presence of  
24 the Jury)

25          **THE COURTROOM DEPUTY:** All rise for the jury.

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1           **THE COURT:** All right. Please be seated, everyone.

2 Welcome back, members of the jury.

3 All right. So, let's resume.

4           **MR. PORRITT:** Thank you, Your Honor.

5                           **DIRECT EXAMINATION, RESUMED**

6 **BY MR. PORRITT**

7 **Q** I would like to introduce to the witness Exhibit 333, not  
8 yet been admitted.

9 (Document displayed to the Witness)

10           **THE COURT:** Okay.

11 **BY MR. PORRITT**

12 **Q** Do you see that exhibit in front of you, Mr. Musk?

13 **A** I do.

14 **Q** Do you recognize this document?

15 **A** Uh, yes. An NDA.

16 **Q** If I can direct you to Page 4 of Exhibit 333.

17 (Document displayed)

18 **Q** Do you see that? Is that your signature on Page 4 of  
19 Exhibit 333?

20 **A** Yes.

21           **MR. PORRITT:** At this point we move to admit Exhibit  
22 333, Your Honor.

23           **THE COURT:** Any objection?

24           **MR. SPIRO:** No objection.

25           **THE COURT:** Admitted. You may publish.

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1 (Document displayed)

2 (Trial Exhibit 333 received in evidence.)

3 **BY MR. PORRITT**

4 **Q** So you have --

5 (Document displayed)

6 **Q** -- Exhibit 333 in front of you, do you see that?

7 **A** Yes.

8 **Q** And that's a nondisclosure agreement you signed with the  
9 PIF, is that correct?

10 **A** Yes.

11 **Q** And you see it has at the top right-hand corner, has the  
12 seal there of the Saudi Arabia PIF; do you see that?

13 **A** Yes.

14 **Q** And you see the first line has:

15 "Reference to a potential project..."

16 Do you see that?

17 **A** Yes.

18 **Q** And then in this document there is, there's no amount of  
19 funding discussed in this document, correct?

20 **A** It's an NDA, so it's a nondisclosure agreement.

21 **Q** Okay. And then if you turn to Page 3, Paragraph 4 of  
22 Exhibit 333.

23 (Document displayed)

24 **Q** See there, it says:

25 "...either party can determine it does not

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1 wish to proceed with the potential  
2 project..."

3 Do you see that?

4 **A** Yeah. I mean, I think this is sort of, kind of a form  
5 letter type, sort of the standard language.

6 **Q** And this is in connection with the potentially  
7 going-private transaction, correct?

8 **A** Yes.

9 **Q** Okay. And then finally on Page 4, as you have already  
10 testified, you signed this agreement. Correct?

11 **A** Yes.

12 **Q** All right. And this is the only writing you ever received  
13 from PIF that you signed, correct?

14 (Document displayed)

15 **A** Um, I -- I -- I'm -- possibly; I'm not sure if we received  
16 other things. There were so many communications. But...

17 (Reporter clarification)

18 **THE WITNESS:** I'm not sure if this is the only  
19 document, but there certainly were many other communications  
20 with them.

21 **BY MR. PORRITT**

22 **Q** And then, you recall on August 10th you also met with  
23 Mr. Durban and Mr. Dees, correct?

24 **A** Correct.

25 **Q** Okay. Separately, not together, correct?

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1 (Document taken off display)

2 **A** I believe so. They might have been -- yes, I think there  
3 was perhaps -- might have been one meeting that they were  
4 together, but I'm not sure if it was that meeting.

5 **Q** Okay. And you didn't speak to Mr. Dees before the  
6 August 7th tweets, correct? About going private.

7 **A** Well, actually, the -- I believe he was at the dinner that  
8 I had at Larry Ellison's house with Masayoshi Son from  
9 SoftBank.

10 **Q** That was in 2017, correct?

11 **A** Yes, but that was also discussing -- that was like -- the  
12 idea of a take-private was, I believe, just -- we talked about  
13 there. Ironically, he decided to invest in WeWork instead of  
14 Tesla.

15 **Q** So I guess I'll be more precise in my question. That's my  
16 mistake. Between July 31st and August 7, 2018, you did not  
17 speak to Dan Dees. Correct?

18 **A** I don't recall the exact -- I do not recall offhand if I  
19 spoke to him in those exact dates, five years ago.

20 **Q** Do you recall Mr. Durban gave you a presentation on  
21 August 10, 2018?

22 **A** He gave a presentation. I'll take your word for it it was  
23 on that day.

24 **Q** Okay. And Mr. Dees also gave you a presentation?

25 **A** Yes.

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1     **Q**     Okay. Do you recall anything about that presentation?

2     **A**     Um, again, I'm not sure of the exact date. But in the  
3     case of the sort of presentation with Mr. Dees, um, there were  
4     a wide range of take-private possibilities discussed.

5     **Q**     Okay.

6     **A**     Um --

7             **MR. PORRITT:** If I can show the witness Exhibit 254.

8             (Document displayed to the Witness)

9             **THE COURT:** Okay.

10            **MR. SPIRO:** No objection.

11            **THE COURT:** All right. Then I take it you would like  
12     this admitted?

13            **MR. PORRITT:** Yes, move to admit Exhibit 254.

14            **THE COURT:** All right, it is admitted.

15            (Trial Exhibit 254 received in evidence.)

16            (Document displayed)

17     **BY MR. PORRITT**

18     **Q**     If I can turn to the second page of Exhibit 254.

19            (Document displayed)

20     **Q**     Do you see that?

21     **A**     Yes, yes.

22     **Q**     Is this the presentation you received from Mr. Dees of  
23     Goldman Sachs on August 10th, 2018?

24     **A**     Um, I think -- I think so. This may not be everything  
25     that was provided, but I think this was one of the things.

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1 Q If I can refer you to -- it's one, two -- Page 4 of  
2 Exhibit 254.

3 (Document displayed)

4 Q Do you see that?

5 A Yes.

6 Q Is that what you were referring to just a couple of  
7 minutes ago?

8 A It's part of what I was referring to. This -- there's  
9 multiple ways to take a company private, and these are some of  
10 the ways.

11 Q Okay. And you see in the middle column there, there's a  
12 discussion about using a special purpose vehicle, "SPV"? Do  
13 you see that?

14 A Yes.

15 Q And it notes that there's a possibility the SPV could be  
16 considered a registered investment company?

17 Do you see that?

18 A Yes.

19 Q And it could -- if it had more than 2,000 investors, it  
20 would have to register as a public company?

21 A Yes.

22 Q Are the SPVs in SpaceX registered as public companies?

23 A I don't think so, but some of them may be.

24 Q And if we turn to Page T54-7.

25 (Document displayed)

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1 Q Do you see that talks about the private investment  
2 policies for investors in Tesla?

3 A Yes.

4 Q And you will see in the box at the top there, Goldman  
5 Sachs had already identified that the value of these funds'  
6 current Tesla holdings is large, relative to the total amount  
7 of non-traded Level 3 assets held by those funds?

8 A That's what it says.

9 Q All right. So Goldman Sachs is already identifying  
10 limitations on the ability of Tesla's investors to maintain  
11 their investment in a private Tesla, isn't that correct?

12 A Yes, there are some limitations. But it's important to,  
13 um, bear in mind that Tesla is -- in any case, as a public  
14 company, for all of these entities, is less than 15 percent of  
15 assets in their funds as a public company.

16 Public or private, it is -- it is -- it's extremely rare  
17 for these large funds to have more than 15 percent of assets in  
18 any public or private company. It's not different, public or  
19 private.

20 Q If I can refer you back to Exhibit 121. It's been  
21 admitted, subject to redactions.

22 (Document displayed)

23 Q And specifically, if I can direct to you Page 121-8.

24 (Document displayed)

25 Q Do you have that page in front of you?

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1     **A**     Yes.

2     **Q**     And these are your text messages from your phone, correct?  
3     You recall, we discussed earlier?

4     **A**     Correct.

5     **Q**     All right. And you'll see there, in the middle of 251 --  
6     121-8, you'll see there's a text from you to Yasir, saying:

7             "This is a major problem."

8             Do you see that?

9     **A**     I do.

10    **Q**     And it's referring to the image immediately above that?  
11    Do you see that?

12    **A**     Yes. I think this is maybe taken out of context. There  
13    are messages before this.

14    **Q**     But on that day, that's the first -- that's the first text  
15    you sent to Yasir on August 10th, isn't that correct?

16    **A**     It may be the first text, but I think maybe not the --  
17    maybe not the first conversation.

18    **Q**     You had a short telephone conversation with Yasir on  
19    August 10th?

20    **A**     I think I may have.

21    **Q**     Okay. But you sent -- on August 10th, you sent Yasir this  
22    image, and then the text titled "This is a major problem." Do  
23    you see that?

24    **A**     Yes.

25    **Q**     Okay. And the attachment was a newspaper article, is that

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1 correct?

2 **A** Yes.

3 **Q** Okay. And the newspaper article downplayed any interest  
4 of PIF in a going-private transaction for Tesla, isn't that  
5 correct?

6 **A** That is correct.

7 **Q** Okay. And that's a major problem for you?

8 **A** Yes. Because the newspaper article was completely  
9 different from what Yasir had told me, and to Sam Teller and  
10 Deepak Ahuja, that they were committed to the take-private, and  
11 they would do whatever to get it done. That's what they told  
12 me verbally. And so the article was -- contradicted that.

13 **Q** And then at the bottom of Page 121-8 --

14 **MR. PORRITT:** If you can blow that up a little bit,  
15 Derek, so we can see it, small text.

16 (Document enlarged)

17 **MR. PORRITT:** This is -- Yasir sends you a lengthy  
18 text message back, correct?

19 **A** Yes.

20 **Q** Says that PIF has purchased a passive stake in shares of  
21 Tesla.

22 **A** Yes.

23 **Q** Correct?

24 **A** Yes.

25 **Q** That PIF remains interested in potential investment

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1 opportunities. Do you see that?

2 **A** Yes.

3 **Q** (As read)

4 "We would like to explore investing in Tesla  
5 subject to creating a production hub in Saudi  
6 Arabia."

7 **A** Yes.

8 **Q** And (As read):

9 "We would like our teams to start working  
10 together in a confidential manner to explore  
11 a potential transaction."

12 Right?

13 **A** That is what this text says.

14 **Q** And you just signed a nondisclosure agreement with the  
15 PIF, correct, on August 10th. We saw that. That was Exhibit  
16 333.

17 **A** Yes.

18 **Q** Okay. And if we go to the next page, 121-9, the first  
19 text is your response. And you write:

20 "Thank you, this is much appreciated."

21 Do you see that?

22 **A** Yes.

23 **Q** So in response to Yasir's text on 1-21-8 describing their  
24 interest in exploring a potential transaction, you just say  
25 "Thank you." You have no disagreement with that categorization

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1 by Yasir at that point in time. Isn't that correct?

2 **A** Um, well, no, that's not quite correct. The -- the -- I  
3 mean, at this point, Yasir is obviously backpedaling from what  
4 he told -- told me and Deepak and Sam, that they were committed  
5 to the transaction.

6 I was just asking that with respect to the press, that  
7 they at least, at a minimum, can say that they were, um, at a  
8 minimum say that they were exploring -- that their discussions  
9 were real. I wasn't asking that they confirm their commitment  
10 as they had done to -- done to us with the meeting at Tesla  
11 earlier, but -- so it's more like this is like the least they  
12 could do.

13 But -- you know. This is not -- um, this is -- this is --  
14 this is Yasir -- I have to be totally -- I mean, I mean, not --  
15 this is to -- to -- this -- this is ass-covering, for lack of a  
16 better word.

17 This is not -- it was just that -- I just wanted to say,  
18 at minimum, confirm that we were in discussions. Even if he  
19 was not willing to confirm that they're committed to take Tesla  
20 private, at least confirm that they were in discussions.

21 **Q** Now, this is a private text from Yasir to you. Correct?

22 **A** Yes. Well, not that private at this the point, obviously.

23 **Q** Yasir had no idea when he sent this text that anyone other  
24 than you would read it. Correct?

25 **MR. SPIRO:** Objection. What does he know about what

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1 Mr. Yasir was doing?

2 **THE COURT:** Overruled. He can testify as to his  
3 understanding.

4 **THE WITNESS:** My guess is that he thought that this  
5 would possibly become public at some point. And this strikes  
6 me as something that was drafted by his lawyers. But it is not  
7 -- it does not describe the reality of the situation.

8 **BY MR. PORRITT**

9 **Q** At this point (Indicating), was Yasir named in any  
10 lawsuits arising out of your "Funding secured" tweet?

11 **A** No. But I suspect he anticipated that that might be the  
12 case.

13 **Q** Well, has PIF ever been named in any lawsuits arising out  
14 of this "Funding secured"?

15 **A** Not -- not yet.

16 **Q** Was Yasir subject to investigation in connection with the  
17 "Funding secured" tweets at this point in time?

18 **A** Well, um, we -- we have tried our absolute hardest to  
19 subpoena Yasir, and to have him be part of this lawsuit.

20 The interesting question for you, sir, is: Why did you  
21 not subpoena him?

22 **Q** Well --

23 **A** Because if you did, it would destroy your case. That's  
24 why.

25 **Q** Well, you -- we, in fact, did send court process to Saudi

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1 Arabia to get his testimony --

2 **MR. SPIRO:** Objection, not true.

3 **THE COURT:** Hold on. This whole inquiry is not  
4 relevant. So I'm going to strike Mr. Musk's answer, or his  
5 inquiry, and I'm going to strike Mr. Spiro's response. It's  
6 not appropriate.

7 **BY MR. PORRITT**

8 **Q** When it comes to the two participants in this  
9 conversation, you and Yasir, at this point in time, August 10,  
10 2018, who has the greatest motive to ass-cover, to use your  
11 words?

12 Isn't it you, Mr. Musk?

13 **A** No. He -- in my opinion, Yasir, um -- I think probably  
14 Yasir was worried about future legal action.

15 **Q** Weren't you being concerned about being exposed as a liar  
16 in your "Funding secured" tweet?

17 **A** Yes. Absolutely.

18 **Q** Okay. And if we can move on, in 121-10 -- this is now on  
19 to the next day, sorry, August 11th. And you sent another text  
20 (As read):

21 "What the hell is going on here? This is  
22 false."

23 Do you see that?

24 **A** Yes.

25 **Q** And that's referring to yet another news story, referenced

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1 up above? Do you see that?

2 **A** Yes.

3 **Q** And then down below --

4 **THE COURT:** I'm a little confused. Who's the  
5 recipient of that? I can't tell.

6 **MR. PORRITT:** That's to Yasir, Your Honor.

7 **THE COURT:** Okay.

8 **MR. PORRITT:** If you can just -- yes, there it is.

9 **THE COURT:** You're not showing the whole column at the  
10 top; it's hard to read.

11 **MR. PORRITT:** Sorry. I apologize, Your Honor. There  
12 you see --- "Yasir" in the right hand indicates who the -- it's  
13 outgoing from Mr. Musk, and the recipient is Yasir.

14 **BY MR. PORRITT**

15 **Q** And then we have a statement from Yasir:

16 "It's not true. No body talked to them."

17 Do you see that?

18 **A** Yes.

19 **Q** That's not Yasir trying to backpedal, is it?

20 **A** I don't know.

21 **Q** And then you have another email from -- another text,  
22 sorry, from Yasir to you, saying (As read):

23 "Just wanted to check in and see when your  
24 team would be able to start sending us  
25 information..."

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1 And start the process. Do you see that?

2 A Yes. He is asking to essentially move forward with the  
3 take-private.

4 Q Well, he's asking for a kickoff meeting. Correct?

5 A I mean, he's asking to begin the process of the  
6 take-private.

7 Q Starting with getting information for them to evaluate.  
8 Isn't that correct?

9 A In a take-private there would be information exchanged.

10 Q And this is information you had agreed to provide to him  
11 at the July 31st meeting; isn't that correct?

12 A I don't -- I want to be clear in that -- in the -- in the  
13 meeting at Tesla with myself and Sam Teller and Deepak Ahuja,  
14 Yasir was unequivocal about taking Tesla private. There was no  
15 condition. There were no conditions.

16 Q All right. Well, you then say (As read):

17 "Please refute this false statement that PIF  
18 has no interest in Tesla. This is  
19 outrageous."

20 Do you see that?

21 A Yes. I was upset that what was -- we were reading about  
22 in the press was completely contradictory to what he had told  
23 me in person, that they were committed to take Tesla private.

24 Q And it was what he told you on July 31st that led you to  
25 issue the tweet "Funding secured," isn't that correct?

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1     **A**     Sorry?

2     **Q**     It was that statement from the July 31st meeting that led  
3     you to tweet "Funding secured." Isn't that correct?

4             **MR. SPIRO:** Objection. Vague.

5             **THE COURT:** Overruled.

6             **THE WITNESS:** You mean, the -- if you're referring to  
7     the meeting at Tesla?

8     **BY MR. PORRITT**

9     **Q**     Yes. On July 31st.

10    **A**     Yes. The meeting, um, where Yasir, okay, confirmed  
11    unequivocally that they would support Tesla going private, that  
12    is part of what "Funding secured" meant. But in addition, like  
13    I said, there is the SpaceX stock which could also be used.

14    **Q**     To continue on 121-10, you'll see third entry from the  
15    bottom there. Yasir sends you a Bloomberg article. Isn't that  
16    correct?

17    **A**     Yes.

18    **Q**     And you are not satisfied with the Bloomberg article, are  
19    you?

20    **A**     I am not, because it -- as I say, it is -- does not  
21    reflect the conversation that Yasir and I had at Tesla. I mean  
22    -- yeah.

23    **Q**     And you say:

24             "...we cannot work together."

25             Right?

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1     **A**     Well, I mean --

2     **Q**     You tell Yasir you cannot work together. It's written  
3     there in black and white, isn't it?

4     **A**     That has to be read in context with the prior statement,  
5     which is that Yasir -- I say Yasir had said definitely  
6     interested in taking Tesla private, had wanted to do so since  
7     2016. Had made it clear that he was the decision-maker and was  
8     backed by the Crown Prince, who regarded it as strategically  
9     important at a national level.

10           And when I say "I'm sorry, but we cannot work together,"  
11     it's like if he does not stand by his word, then we -- then we  
12     cannot work together.

13     **Q**     So is it fair to say that you were very angry with Yasir  
14     at this point on August 12th?

15     **A**     Yes.

16     **Q**     Okay. And you tell him in the middle of there "Sorry,"  
17     And then next, "It's over." Do you see that?

18     **A**     Yes.

19     **Q**     So you're threatening PIF cannot participate any more in  
20     the going-private transaction? Isn't that right?

21     **A**     I believe that if someone does not stand by their word,  
22     then you should not work with them.

23     **Q**     Okay. So you wanted to pressure them into saying  
24     something they weren't otherwise willing to say publicly? Is  
25     that correct?

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1     **A**     I wanted them to -- I wanted Yasir to be truthful, and to  
2     be clear that he had committed to take Tesla private; that is  
3     what he had told us. And he needed to keep his word. And if  
4     he did not keep his word, we could not work together.

5     **Q**     And then Yasir says (As read):

6             "Let's see the numbers, and get our people to  
7             meet and discuss. We cannot approve  
8             something that we don't have sufficient  
9             information on."

10            Do you see that?

11     **A**     Yes.

12     **Q**     And that is consistent with Yasir's prior text saying:

13     Please send us the information. Isn't that right?

14     **A**     This is Yasir backpedaling, and going back on what he told  
15     us at Tesla.

16     **Q**     Well, Yasir then says (As read)

17             "We've agreed that -- "We've agreed that you  
18             will send the financial information and the  
19             way going forward within a week, and no thing  
20             happened since."

21            Isn't that right?

22     **A**     Yes. I mean what he's saying here is that he wants to  
23     move forward with the take-private. And as a matter of course,  
24     in a take-private, you would of course send the information and  
25     exchange documents.

## MUSK - DIRECT / PORRITT

1 Q So, you relied on the statements -- so in your view, what  
2 Mr. Musk -- what Yasir says here is consistent with you saying  
3 "Funding secured." Is that what you're saying?

4 A I'm saying that Yasir needs to stick to his word about  
5 taking Tesla private.

6 Now, of course, in taking something private, you have to  
7 go through the -- there are documents that are exchanged. But  
8 it's like buying a house. You say you want to buy the house.  
9 PIF is like the bank, and saying that the bank says they will  
10 support you. And then there's still documentation that you do  
11 after you agree to buy a house. But that doesn't -- that's --  
12 that -- you're still going through with it, like, if an offer  
13 on a house is accepted.

14 And PIF being sort of like the bank here, the bank said  
15 they are supportive in doing that. But, of course, you still  
16 do paperwork to do the transaction. But the transaction, you  
17 know, would -- would go through. It's just you have to go  
18 through, do the paperwork.

19 Q Well, when I bought my house, I had a written commitment  
20 from the bank before I made an offer on it. So I think you are  
21 now suggest- -- you may be able to buy a house without having a  
22 written commitment from a bank, but the rest of us understand  
23 you get a written commitment from the bank before you start  
24 making offers.

25 A That's not -- that's not how -- that's not how things work

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1 with a sovereign investment fund. The -- I mean, with -- with  
2 the prior investment that they've done, the 5 percent, there  
3 was no discussion of price, there were no documents signed.  
4 They agreed to buy 5 percent of Tesla. Again, no documents  
5 were signed. It was just verbal. And they bought 5 percent of  
6 Tesla.

7 It is reasonable to expect, if that is their behavior in  
8 the past, that that will be their behavior in the future. That  
9 you can take their word for it.

10 **Q** So you're saying you would expect less documentation from  
11 a multi-billion-dollar taking-private transaction of a public  
12 company than for buying a house. Is that your testimony?

13 **A** No. What I'm saying is that one should expect  
14 consistency. And when -- in a conversation earlier in the  
15 year, I said: If you're serious, you should buy 5 percent of  
16 Tesla in the public market. I said to Yasir: If you're  
17 serious, you should buy 5 percent in the public market.

18 There was no document signed. There was no discussion of  
19 price. And they went forward, and they bought 5 percent of the  
20 company. Therefore, it's reasonable to expect that they will  
21 behave the same in the future as they have in the past.

22 **Q** But here they are on August 12th, asking for more  
23 information, correct, before they can start approving anything.  
24 Isn't that correct?

25 **A** They're asking for more information. That is a reasonable

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1 thing to ask for.

2 **Q** And then, if you can turn to 121-12.

3 (Document displayed)

4 **Q** You're pointing out that they're experienced financially,  
5 and that there are many other investment funds that want to be  
6 part of this deal.

7 Then Yasir writes back saying (As read):

8 "We haven't taken any company private yet in  
9 the U.S. or anywhere else and the agreement  
10 as was minuted by my people is to wait for  
11 the information to be sent by you within a  
12 week on how we will move forward together."

13 Do you see that?

14 **A** Yes. This is, unfortunately, Yasir backpedaling on his  
15 commitment.

16 **Q** And --

17 **A** Or at least -- I don't know.

18 **Q** Now, you didn't have any minutes of the July 31st meeting,  
19 correct?

20 **A** No. Nor do I recall the Saudi PIF making any minutes,  
21 either.

22 **MR. PORRITT:** Your Honor, at this point I would like  
23 to show the witness Exhibit 80. It's been admitted.

24 **THE COURT:** All right. You may do so.

25 (Document displayed)

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1 BY MR. PORRITT

2 Q Do you have Exhibit 80 in front of you, Mr. Musk?

3 A Yes.

4 Q And you see, this is the document entitled "MINUTES-ELON  
5 MUSK TESLA, 31 July 2018." Do you see that?

6 A Yes.

7 Q And it has the seal of the PIF on the top edge corner?

8 A Yes.

9 Q And that is the same as the NDA that you signed, right?

10 A Same seal, yes.

11 Q And I think, if I refer you to the second page --

12 (Document displayed)

13 Q -- of Exhibit 80, you've got Yasir (As read):

14 "I believe in Tesla and would like to see

15 where we can collaborate with you. And I'd

16 like to listen more about your plan to take

17 it private. We are long-term investors."

18 Do you see that?

19 A Yes. That is not accurate. I believe that is not  
20 accurate.

21 Q Okay.

22 A That -- yeah. I -- I do not observe any minutes being  
23 taken. This was done after the fact.

24 Q And then Yasir asks later down, you know:

25 "How can we take this forward?"

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1 And then Yasir and Elon agree the teams should talk, then  
2 they will be engaged. Do you see that?

3 A Um, yes.

4 Q And that's exactly what Yasir was describing in his text  
5 to you we've been going through in Exhibit 121. Isn't that  
6 correct?

7 A This is backpedaling, as I said.

8 Q Well, this is consistent with what Yasir was saying in the  
9 text, 121, we were looking at. Right?

10 A Yes. The text was backpedaling, and so is this.

11 Q And then it concludes (As read):

12 "I would like to listen to your plan, Elon,  
13 and what are the financial calculations to  
14 take it private in the next week and if I did  
15 not receive anything I will call you."

16 Correct?

17 A Yes.

18 Q And isn't that exactly what we were looking at in  
19 Exhibit 121, a moment ago?

20 A I mean, that last statement, um, is him saying that he  
21 wants to move forward with the take-private. He just -- you  
22 know, so...

23 Q Says he wants to get information about moving forward to a  
24 potential transaction. Right?

25 A I mean, he needs to know how much money to send, yeah. I

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1 mean it's -- the precise numbers depend on how -- what other  
2 investors will remain.

3 Q Right. Because you didn't even know the precise money  
4 yet, did you?

5 A Sorry; say that again?

6 Q You did not know the precise amount of money at this point  
7 in time, did you? On July 31st?

8 A No, not the precise amount of money. But that, I think,  
9 is neither here nor there. They have -- this is one of the  
10 biggest funds in the world. This -- this is not a large amount  
11 of money for them.

12 Q So, if we can go back to Exhibit 121.

13 (Document displayed)

14 Q This is still on August 12th, correct?

15 A Yes.

16 Q Okay. And you tell Yasir in the middle there (As read):

17 "I'm sorry, but there will be no further  
18 communication unless you fix the public  
19 perception of wishy washy support and  
20 interest from PIF."

21 Do you see that?

22 A Yes.

23 Q So at this point in time you were still angry at Yasir?

24 A Yes. I was -- I was very upset because he had been  
25 unequivocal in his support for taking Tesla private when we

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1 met, and now he appeared to be backpedaling.

2 **Q** And you were angry at Yasir because you had been caught  
3 out in public in a lie, isn't that correct?

4 **A** That is completely false. I'm angry with Yasir because he  
5 is not sticking to -- in these texts he is not sticking to what  
6 he told us. That is why I'm angry with him. It's because he  
7 said he was committed to taking Tesla private, and now he is  
8 backpedaling. Anyone would be angry about that.

9 **Q** And what he's describing here isn't consistent with being  
10 "Funding secured," is it?

11 **A** He is backpedaling from his commitment that he made to me  
12 and to Sam Teller and to Deepak Ahuja.

13 **Q** Well, the agreement or discussions as described by Yasir  
14 in Exhibit 121, the text messages, the private text messages  
15 between you and him is not consistent with saying "Funding  
16 secured," is it?

17 **MR. SPIRO:** Objection. Which messages?

18 **MR. PORRITT:** In Exhibit 121.

19 **MR. SPIRO:** Well, that's a 15-page exhibit.

20 **THE COURT:** Well --

21 **MR. PORRITT:** Your Honor --

22 **THE COURT:** The gist of it has been summarized here.

23 You can answer the question, Mr. Musk.

24 **THE WITNESS:** Well, when I said "Am considering taking  
25 Tesla private, funding secured," that was in reference to the

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1 meeting that prior weekend, I believe, with Yasir where he had  
2 told me funding was committed.

3 So my tweet was truthful. Absolutely truthful. And  
4 moreover, it's not just the PIF. I also had SpaceX stock. And  
5 SpaceX stock, alone, meant funding secured, by itself. It's  
6 not that I want to sell SpaceX stock, but I -- I could have.  
7 And if you look at the Twitter transaction, that is what I did.  
8 I sold Tesla stock to buy -- to complete the Twitter  
9 transaction. And I would have done the same here.

10 **MR. PORRITT:** Your Honor, I would like to play the  
11 witness, for impeachment purposes, a portion of his deposition  
12 transcript taken November, 2021. Page 246, Line 20, through  
13 247, Line 4.

14 **THE COURT:** 246, Line 20, did you say?

15 **MR. PORRITT:** Yes, Your Honor.

16 **THE COURT:** Through what?

17 **MR. PORRITT:** 247, Line 4.

18 **THE COURT:** Line --

19 **MR. PORRITT:** 4.

20 **THE COURT:** 4?

21 **MR. SPIRO:** Objection. It's not inconsistent.

22 **THE COURT:** Objection overruled. You can play it.

23 (Portion of video played, not reported)

24 **BY MR. PORRITT**

25 **Q** So those questions, again under oath, there is no

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1 reference to SpaceX in that answer, is there?

2 **A** I think the --

3 **Q** Please just answer the question, Mr. Musk.

4 **A** What, what I said there was -- was literally true. That  
5 it -- it's -- but it's not the only basis for funding being  
6 secured.

7 **Q** We sat for a day in Austin, Texas, talking a lot about  
8 "Funding secured" tweet. Do you remember that day, Mr. Tweet  
9 -- Mr. Musk?

10 **A** Mr. Tweet?

11 **Q** Mr. Tweet, sorry.

12 **A** Probably an accurate description.

13 (Laughter)

14 **Q** You remember that day, Mr. Musk, correct?

15 **A** Not precisely, but yes.

16 **Q** Okay. And we went -- and over the course of that  
17 deposition you never mentioned once, once, that your SpaceX  
18 shares were a basis for you saying --

19 **MR. SPIRO:** Objection.

20 **BY MR. PORRITT**

21 **Q** -- "Funding secured"?

22 **MR. SPIRO:** Objection. It's improper, without  
23 bringing a witness's attention to a question. He never asked  
24 that question, and it's in the prior deposition, as he well  
25 knows.

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1           **THE COURT:** Overruled. He can ask about this.

2 Deposition and if the witness recalls, he can answer.

3           **THE WITNESS:** You did not ask me if there was any  
4 other basis for Funding secured." However, in the SEC  
5 testimony, which is closer to the time and more accurate, I did  
6 mention SpaceX. And you're aware of that too.

7 **BY MR. PORRITT**

8 **Q** Well, I'm aware you raised it as a glimmer in your eye,  
9 without any commitment, any thought.

10 **A** I specifically mentioned SpaceX in the SEC testimony.  
11 You're aware of that, and you're deliberately excluding that  
12 from the jury.

13 **Q** Well, I'm relying on your sworn answers. But we'll move  
14 on.

15           **MR. PORRITT:** If we can turn to identify August 13 --  
16 Exhibit 53, show that to the witness? It's been admitted.

17 (Document displayed to the Witness)

18 **BY MR. PORRITT**

19 **Q** Do you see Exhibit 53, Mr. Musk?

20 **A** Yes.

21 **Q** And this is another public statement drafted for you by  
22 Tesla?

23 **A** Yes.

24 **Q** Okay. And to your recollection, is this the first public  
25 statement by you about the going-private transaction since your

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1 August 7th tweet?

2 **A** I think there may have been other tweets as well.

3 **Q** After August 7?

4 **A** I think so.

5 **Q** Between your August 7th tweets and this blog post, did you  
6 look at what happened to Tesla's stock price?

7 **A** I -- I do not look at the stock price frequently because I  
8 am -- especially at the time, very busy trying to make Tesla  
9 succeed, and spending a lot of time in the factory.

10 **Q** So you would send out a tweet which you knew would have an  
11 impact on the stock price on August 7th, and then you have  
12 complete disregard as to what impact it has on Tesla investors?  
13 Is that correct?

14 **A** No, that's not correct.

15 **Q** Well, how can you check what's happening to Tesla  
16 investors if you're not looking at the stock price?

17 **A** The stock price moves a lot for many reasons. And  
18 correlation is not causation.

19 **Q** But in this case, you expected a reaction from your  
20 August 7th tweets. Isn't that right?

21 **A** Not necessarily. As I mentioned in earlier testimony, the  
22 -- when I tweeted out, for example, that I thought the stock  
23 price was too high, the stock price went even higher. So you  
24 would think if I tweeted out stock price is too high, that the  
25 stock price would go down. But in fact, it went up. So you

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1 cannot conclude, based on a tweet, whether it will go up or  
2 down.

3 Q Did it go up immediately after your tweet saying it was  
4 too high? Do you recall?

5 A I don't recall.

6 Q In fact, it went down the day after; isn't that correct?

7 A I don't recall. But the stock price moves a great deal  
8 for many reasons that are counter-intuitive.

9 Q If I can direct you to this paragraph on Exhibit 53"

10 "Why did I make a public announcement?"

11 Do you see that paragraph there?

12 A Yes.

13 Q Have you had a fair chance to read that paragraph?

14 A Would you like me to read it now?

15 Q Just to yourself.

16 (Witness examines document)

17 A Yes.

18 Q Now, you previously testified that you made the public  
19 announcement on August 7th, and that "Funding secured" tweet in  
20 response to a *Financial Times* article, correct?

21 A That, that affected the timing of it, yes.

22 Q Okay. There's no reference of a *Financial Times* article  
23 in this (Indicating), Exhibit 53, is there?

24 A No, but that's neither here nor there.

25 Q And to have a conversation with investors, you didn't need

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1 to tweet out in the middle of the trading day on August 7th,  
2 2018, that you were considering taking Tesla private at 420,  
3 "Funding secured," did you?

4 **A** No, but I wanted to make sure that all investors were  
5 aware of the take-private discussions, and that whatever leak  
6 the *Financial Times* was aware of, not be that some investors  
7 would know it and some others wouldn't, and therefore, those  
8 who didn't know it would be disadvantaged.

9 I wanted to make sure that all investors were aware of it,  
10 and not just some. That seemed like the fairest and right  
11 thing to do.

12 **Q** All right. But you didn't know if the *Financial Times* had  
13 any information about the going-private, did you?

14 **A** Not for sure, but I strongly suspected they did.

15 **Q** And then you go on to say "Why did I say 'Funding  
16 secured'?"

17 **A** Yes.

18 **Q** And then you refer to the July 31st meeting. Do you see  
19 that there?

20 **A** Yes.

21 **Q** And you say (As read):

22 "During the meeting the managing director of  
23 the fund expressed regret...and he strongly  
24 expressed his support for funding a  
25 going-private transaction for Tesla at this

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1           time."

2           Do you see that?

3   **A**     Yes.

4   **Q**     All right. That's not what he was describing in the text  
5   that he was sending you just a day earlier, is it?

6   **A**     That is not what he was saying in the backpedaling text,  
7   no.

8   **Q**     Okay. You didn't run this language past PIF, did you?

9   **A**     I don't think so.

10   **Q**    So you made public statements about PIF, without their  
11   consent.

12   **A**     I felt this was critical information that the public  
13   needed to know.

14   **Q**     PIF would never have agreed to this language being  
15   included in this blog post, isn't that correct?

16   **A**     I don't know.

17   **Q**     If you'll also move down in Exhibit 53, you state -- and  
18   if you keep moving down, sorry, Derek -- you say (As read):

19           "My best estimate right now is that..."

20           At the last sentence of that top paragraph there on the  
21   screen: "

22           "My best estimate right now is that

23           approximately two-thirds of shares owned by

24           all current investors would roll over to a

25           private Tesla."

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1 Do you see that?

2 **A** Yes.

3 **Q** Okay. You hadn't spoken to two-thirds of investors.

4 Correct?

5 **A** That's why I called it an estimate.

6 **Q** Okay. In fact, you had no basis for saying two-thirds of  
7 investors would roll over. Isn't that correct?

8 **A** I wouldn't say I had no basis. I was aware that at least  
9 Larry Ellison, and I think likely many others that I knew,  
10 would participate in the take-private. That's why I call it my  
11 best estimate.

12 **Q** And if we can go back to Exhibit 121, text messages. You  
13 received a text message from Yasir after this blog post was  
14 published, correct?

15 (Document displayed)

16 (Witness examines document)

17 **A** Sorry, am I --

18 **Q** On 121-13.

19 **THE COURT:** Can you highlight it so it we can see  
20 what --

21 (Document enlarged)

22 **BY MR. PORRITT**

23 **Q** Do you see that?

24 **THE COURT:** So which, which -- do you want to  
25 highlight -- are you bringing his attention to a particular --

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1           **MR. PORRITT:** Yeah. Sorry. It is the's one in the  
2 middle there, Your Honor:

3           "Elon, I'm personally surprised."

4           **BY MR. PORRITT**

5           **Q**     Do you see that?

6           **A**     Yes.

7           **Q**     And Yasir describes the blog ill-advised and with loose  
8 information. Do you see that?

9           **A**     Yes.

10          **Q**     And you said: Don't be surprised, I'm still upset.  
11 Isn't that correct?

12          **A**     Well, Yasir is making it clear that he still wants to move  
13 forward. He -- he wants the information as soon as possible.  
14 And I'm still upset, yes.

15          **Q**     Following this blog post on August 13th, you sat with the  
16 *New York Times* for an hour for an interview, correct?  
17 Approximately an hour?

18          **A**     I explained the reason why I'm upset, because he allowed  
19 people to think that I was a liar, when I was not. And anyone,  
20 I think, would be upset in my position.

21          **Q**     Um, did you sit for an interview with the *New York Times*  
22 later that week?

23          **A**     There was a -- I didn't sit for an interview. There  
24 was -- I was told that there was an article coming out that had  
25 a bunch of false statements in it, and I wanted to correct

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1 those statements.

2 Q All right. So I don't want to be semantic over an  
3 interview, but you spent time with a *New York Times* reporter on  
4 an article. Correct?

5 A On a phone -- there was a phone call. There was a lengthy  
6 phone call.

7 Q All right.

8 A Yes.

9 Q Was that phone call longer than your meeting with the PIF  
10 on July 31st?

11 A I think -- I think it may have been, yes.

12 Q Okay. So you spent longer with the *New York Times* than  
13 you did with the PIF?

14 A I don't know the exact timing. It was a long time on the  
15 phone with the *New York Times*.

16 Q Okay.

17 MR. PORRITT: If we can bring up Exhibit 171, please.

18 (Document displayed)

19 BY MR. PORRITT

20 Q Do you see the headline here?

21 A The headline is -- at least, the headline is accurate.

22 Q This is the *New York Times* article that was based on --  
23 it's this lengthy telephone conversation with you, is that  
24 correct?

25 A Um, yes. Pardon me. The -- the interview was not -- was

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1 about many things. It was not -- I don't recall discussing the  
2 details of the take-private with the *New York Times*.

3 **MR. PORRITT:** Well, if you could scroll down.

4 (Document displayed)

5 **MR. PORRITT:** To the bottom of the first page there.

6 **THE WITNESS:** Oh, yeah. Okay, sure.

7 **BY MR. PORRITT**

8 **Q** This is a discussion of the events that morning, correct?

9 **A** That's referring to the tweet.

10 **Q** Okay.

11 **A** Or that -- yeah. Sorry -- yes.

12 **Q** All right. And that was based on information you gave the  
13 *New York Times*?

14 (Witness examines document)

15 **A** Um, probably.

16 **Q** Yeah. And you confirmed to the *New York Times* that the  
17 board had not reviewed your tweet before you published it,  
18 isn't that correct?

19 **A** Correct. It actually would not have been appropriate for  
20 the board to review my tweet, because the board is a  
21 counterparty.

22 **Q** Now, following this article, from August 17th to  
23 August 23rd, you were still considering taking Tesla private at  
24 420. Isn't that correct?

25 **A** I was still considering taking Tesla private, 420.

**MUSK - DIRECT / PORRITT**

1     **Q**     Okay. And the market knew that, correct?

2     **A**     After the tweet, they did.

3     **Q**     Yeah, okay. You had not made any disclosure saying you  
4     were no longer considering taking Tesla private at 420,  
5     correct, until August 23rd?

6     **A**     I don't recall the exact date. That may be correct.

7     **Q**     Okay.

8             **MR. PORRITT:** If we could introduce Exhibit 101,  
9     please.

10            (Off-the-Record discussion between counsel)

11            **MR. PORRITT:** Sorry, it's been admitted, Your Honor.

12            **THE COURT:** Okay.

13            (Document displayed)

14     **BY MR. PORRITT**

15     **Q**     Do you have Exhibit 101 in front of you, Mr. Musk?

16     **A**     Yes.

17     **Q**     I can refer you to the -- and you participated in this  
18     board meeting, right?

19     **A**     Yes.

20     **Q**     Okay. And --

21            (Off-the-Record discussion)

22            **MR. PORRITT:** Oh, excuse me. Sorry. I misspoke,  
23     Your Honor. I apologize. We would move to admit this exhibit  
24     at this time.

25            **THE COURT:** All right. Any objection?

**MUSK - DIRECT / PORRITT**

1           **MR. SPIRO:** No objection.

2           **THE COURT:** Admitted. You may publish.

3           (Trial Exhibit 101 received in evidence.)

4           **MR. PORRITT:** Thank you, Your Honor.

5           **BY MR. PORRITT**

6           **Q**     It says (As read):

7                     "Mr. Musk next discussed with the board  
8                     information that he had learned in recent weeks  
9                     following his announcement, including but not limited  
10                    to the negative views of many of the company's current  
11                    stockholders regarding the prospect of the company  
12                    going private, the difficulties the company's current  
13                    stockholders would have in continuing to own Tesla's  
14                    stock if the company went private..."

15           Do you see that?

16          **A**     Yes.

17          **Q**     Okay. So that was information you learned after your  
18                    tweets, correct?

19          **A**     Yes.

20          **Q**     So you tweeted "Investor support is confirmed" without  
21                    finding out whether investors had a negative view of the  
22                    company going private. Isn't that correct?

23          **A**     Well, the views of investors are varied, considerably.  
24                    Some thought taking the company private was good, and some did  
25                    not. There was a range of views that investors had.

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1 Q And so -- well, if I turn on to the next page of  
2 Exhibit 101, you'll see there, you tell the board (As read):

3 "The problems for both institutional  
4 investors as well as small investors were  
5 discussed. As part of this discussion,  
6 Mr. Musk reminded the board that one of his  
7 preferences when considering a going-private  
8 transaction was to allow Tesla's long-term  
9 investors to continue to keep their equity  
10 positions in Tesla, but he had recently heard  
11 from numerous investors that this was very  
12 difficult for internal compliance reasons and  
13 other requirements, and that many of Tesla's  
14 investors preferred the company stay  
15 public..."

16 Do you see that?

17 A Yes. Many, but not all. And actually, some did think it  
18 was better to be private.

19 Q All right. But you didn't go through this exercise before  
20 you tweeted out "Investor support is confirmed," did you?

21 A Sorry, the --

22 Q Before tweeting out "Investor support is confirmed," --

23 A Yes.

24 Q -- you didn't learn about whether investor support was  
25 actually confirmed, did you?

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1     **A**     I felt -- I felt that there was sufficient -- investor  
2     support was confirmed.

3     **Q**     You confirmed that -- you hadn't spoken to any investors  
4     about a going-private transaction at 420, apart from PIF.

5     **A**     There was PIF, there was Larry Ellison, and obviously, my  
6     own share holdings, and with SpaceX stock as a backstop.

7     **Q**     So you think people read "Investor support is confirmed,"  
8     you meant to communicate that Elon Musk's support is confirmed?  
9     That's what you were saying?

10    **A**     I am -- PIF's an investor, Larry Ellison's an investor,  
11    and I am an investor, as well as running the company.

12    **Q**     Okay.

13    **A**     Those are investors.

14    **Q**     All right. And you'd never mentioned the price of 420 to  
15    Larry Ellison or to PIF, right? Correct?

16    **A**     The 420 number was the lowest that I thought it could be  
17    done at. That's why -- the reason I didn't specify a number  
18    higher than 420 was that I was not confident of it being done  
19    above 420, but I was confident of it being -- of it being done  
20    at 420. That's why I didn't -- I didn't leave it open-ended.  
21    Because if the stock were to rise dramatically, then I think  
22    then funding wouldn't be secured. I think it would be secured  
23    at 420, but not at some much higher number. That's why I --  
24    you know, I didn't cite a higher number or leave it open-ended.

25    **Q**     As a result of this feedback you got from investors, you

**MUSK - DIRECT / PORRITT**

1 then pulled the transaction, isn't that correct?

2 **A** After a lot of consideration of all the factors, including  
3 that it would be difficult to keep some of our loyal long-term  
4 investors, and also I should say the -- what became clear, that  
5 the level of distraction that taking the company private would  
6 be, with litigation, such as this litigation, would -- on  
7 balance, it was better for Tesla to stay public.

8 But that -- that is why my original tweet said that I was  
9 considering it. I didn't say the company was going private. I  
10 said I was considering it. That is factually true.

11 **Q** And then if we can turn to the bottom of Exhibit 101, on  
12 Page 4.

13 (Document displayed)

14 **Q** At this board meeting, which you were present at, you said  
15 the board then discussed a new social media policy. Do you see  
16 that?

17 (Witness examines document)

18 **A** Yes.

19 **Q** Okay. That's in connection with your tweets, correct?

20 **A** I don't -- possibly.

21 **Q** Then if you could just --

22 **MR. PORRITT:** I would like to show the witness  
23 Exhibit 229.

24 (Document displayed to the Witness)

25 **MR. PORRITT:** This has not yet been admitted,

**MUSK - DIRECT / PORRITT**

1 Your Honor.

2 **MR. SPIRO:** There is no objection.

3 **THE COURT:** All right.

4 **MR. PORRITT:** Move admission.

5 **THE COURT:** 229 is admitted.

6 (Trial Exhibit 229 received in evidence.)

7 (Document displayed)

8 **BY MR. PORRITT**

9 **Q** Do you see Exhibit 229 in front of you?

10 **A** Yes.

11 **Q** Okay. And this is another public statement drafted for  
12 you by Tesla, is that correct?

13 **A** Drafted and reviewed by me, yes.

14 **Q** Okay. And this is you informing -- informing the market  
15 on August 24, 2018, that you -- Tesla was staying public?

16 **A** Yes.

17 **Q** Okay. And this was the first indication since August 7th  
18 that you were no longer considering taking Tesla private at  
19 420; isn't that correct?

20 **A** Yes.

21 **Q** Okay.

22 **MR. PORRITT:** At this point, no further questions.  
23 Reserve the right to redirect.

24 **THE COURT:** All right. Thank you.

25 Mr. Spiro?

**MUSK - CROSS / SPIRO**

1           **THE WITNESS:** I'm sorry, Your Honor; is it possible to  
2 have some more water?

3           **THE COURT:** Yeah.

4           **MR. SPIRO:** I got it.

5           **THE WITNESS:** Talking a lot. This is --

6           **THE COURT:** It's still empty. It's empty.

7                           **CROSS-EXAMINATION**

8           **BY MR. SPIRO**

9           **Q**     Mr. Musk, good afternoon.

10           I think at some point plaintiff's counsel threw up a  
11 nondisclosure agreement, something about you not checking  
12 language with the PIF nondisclosure agreement before you.  
13 Remember that?

14           **A**     Yes.

15           **Q**     As you're sitting here today, are you -- are you being  
16 charged, sued with breaking a nondisclosure agreement?

17           **A**     No.

18           **Q**     Do you understand, Mr. Musk, what you are being accused of  
19 here today?

20           **A**     I'm -- I'm being accused of making materially false  
21 statements. I'm being accused of a fraud. It's outrageous.

22           **Q**     Sir, do you make mistakes?

23           **A**     Everyone makes mistakes, including me.

24           **Q**     Have you ever tried to deceive your shareholders?

25           **A**     Never.

## MUSK - CROSS / SPIRO

1 Q Why did -- why, in fact, did you want to take Tesla  
2 private in the first place?

3 A I thought it would be good for the shareholders to take  
4 Tesla private. The -- we were under unprecedented attack from  
5 short sellers in the public market. I think it is difficult to  
6 appreciate just how much the Wall Street short sellers were  
7 engaged in fear, uncertainty and doubt campaigns. They  
8 desperately wanted Tesla to die.

9 This was causing us to have problems selling cars and  
10 recruiting people, because if people are reading all the time  
11 about how Tesla is going to die, then that makes it hard to  
12 hire people. And hard to sell cars.

13 Q And so in doing this for shareholders -- and we are going  
14 to put up Exhibit 81 that is in evidence.

15 (Document displayed)

16 Q You understand, Mr. Musk, that while we were going to call  
17 you on our case, plaintiff called you on their case so they  
18 could ask you questions first, but now I have an opportunity to  
19 ask you questions. Do you understand that?

20 A Yes.

21 Q Okay. And so in this proposal to the board of Tesla,  
22 however informal or undetailed it may be, did you make a bid to  
23 take Tesla private?

24 A Yes.

25 Q Okay. And if we could blow up -- I guess it is relatively

**MUSK - CROSS / SPIRO**

1 big, can't see it on you all's screen, but was this bid to the  
2 board real and genuine?

3 **A** Absolutely.

4 **Q** Did you sign your name to it as chairman and CEO of Tesla,  
5 Inc.?

6 **A** Yes.

7 **Q** Now, you've given your reasons already as to the rationale  
8 for going private at this time, or at least considering going  
9 private at this time.

10 **MR. SPIRO:** Can we highlight the sentence that starts  
11 "The difference in operational efficiency...".

12 (Document highlighted)

13 **MR. SPIRO:** This is being published to the jury, I  
14 take it?

15 **THE COURT:** I believe so, yes.

16 **MR. SPIRO:** Thank you.

17 **BY MR. SPIRO**

18 **Q** Was SpaceX very much on your mind as you were considering  
19 taking Tesla private?

20 **A** Absolutely. Absolutely. That's why I mentioned it in the  
21 email to the board, which predates the tweet. This is very,  
22 very important. The 420 wasn't some spur-of-the-moment thing  
23 that happened on a tweet. It was -- it was referencing the  
24 letter to the board that had been sent several days earlier.  
25 And it specifically highlights SpaceX.

## MUSK - CROSS / SPIRO

1     **Q**     So one thing it says here is "operational efficiency."  
2     Can you just explain -- because some of these concepts, you  
3     know, not everybody's been living with for half a decade --  
4     what you mean when you say that the structure of SpaceX allowed  
5     you to think that the structure of taking Tesla private would  
6     work?

7     **A**     So, SpaceX is -- is a private company, but it has  
8     thousands of investors. And -- but because it is private -- I  
9     mean, I outlined, I think, the three reasons here that it is  
10    better. If you're private, then you're not subject to attack  
11    by Wall Street manipulation of the stock price, by the  
12    short-selling community.

13           (Document displayed)

14    **A**     Yeah, exactly. So I believe this is -- is exactly right.

15    **Q**     Moving on from the actual rationale, can you just explain  
16    to the jury simply how so many people are allowed to invest in  
17    SpaceX and how liquidity is generated in SpaceX so that you can  
18    continue to sell your shares? Just explain that to the jury  
19    because I think we skipped over that a little bit.

20    **A**     Yes. So, um, a very large number of investors are able to  
21    own shares directly, but even more indirectly in SpaceX through  
22    what's called special purpose vehicles where the special  
23    purpose counts as one shareholder, but that special purpose  
24    vehicle is able to have thousands of shareholders themselves.

25           And then SpaceX does liquidity events twice a year where

## MUSK - CROSS / SPIRO

1 those shareholders can sell their shares or buy shares. And so  
2 SpaceX is able to, I think, achieve the best of both worlds,  
3 where you can offer employees and small shareholders, offer  
4 them the ability to invest in SpaceX, but you're not subject to  
5 all of these sort of Wall Street sharks that are trying to  
6 destroy the company.

7 **Q** Now, does that experience and did that experience with  
8 SpaceX, day after day, make you believe at this time when you  
9 are sending this proposal to the board that a structure that  
10 allowed the shareholders to remain was feasible?

11 **A** Yes.

12 **Q** And --

13 **A** What I was -- I was really thinking, like, we've got this  
14 great structure for SpaceX that allows shareholders to  
15 participate but doesn't -- doesn't allow manipulation of the  
16 stock by hedge funds and others. And so we are able to focus  
17 on building the rockets and launching them and advancing the  
18 company but without -- without being attacked by short sellers  
19 and without stock manipulation. And that allows SpaceX to be  
20 heads down, focused on building better rockets, and it makes  
21 for much less distraction.

22 So SpaceX, as I say in this email, is able to operate more  
23 effectively than Tesla. And so what -- I thought, well, if  
24 there's some way for Tesla to have the same structure as  
25 SpaceX, then that would allow Tesla to better fulfill its

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1 mission of -- of accelerating the advent of sustainable energy.

2 So, you know. So, yeah.

3 **Q** So Mr. Musk, on cross-examination you were asked a series  
4 of questions about your statement "Funding secured" and what  
5 was in your mind at the time, and your statements here today  
6 versus the deposition that happened three years after the  
7 tweets. Three-plus years after.

8 In the question you were asked in the deposition, you  
9 weren't asked if the PIF and its commitment were the only thing  
10 in your mind and the only source of funding. Is that right?

11 **A** That, that's correct.

12 **Q** And plaintiffs' counsel, when he was asking you questions,  
13 did not bring up the fact that in the very same month of your  
14 tweet, you gave sworn testimony. And is it fair to say that  
15 your memory was fresher the same month of the events than it  
16 was years later?

17 **A** Absolutely.

18 **Q** And when your memory was fresher and you gave testimony  
19 about the sources of funding in your mind when you made the  
20 tweet, Page 12 [sic], Line 21 to Page 214, Line 12, you were  
21 asked (As read):

22 **"QUESTION:** You wrote 'Funding secured.' Do  
23 you see that?

24 **"ANSWER:** Yes.

25 **"QUESTION:** Did you intend for the phrase

## MUSK - CROSS / SPIRO

1 'Funding secured' to refer to the commitment  
2 that you understood the PIF to have made at  
3 the July 31st meeting at Tesla?

4 **"ANSWER:** Yes.

5 **"QUESTION:** Is there anything else you were  
6 referring to when you wrote..."

7 **MR. PORRITT:** (Inaudible)

8 (Reporter clarification)

9 **MR. PORRITT:** Mr. Spiro is just reading a transcript  
10 to the witness, and asking him to agree. That is not a proper  
11 use of the transcript.

12 **MR. SPIRO:** The Court said, for completeness, that I  
13 could.

14 **THE COURT:** Well, you can -- you can elicit a prior  
15 consistent statement.

16 **MR. SPIRO:** Right.

17 **THE COURT:** But rather than just reading it, you  
18 should tell counsel what you are going to read so he doesn't  
19 have any objection, or, or he has his own completeness --

20 **MR. SPIRO:** Sure, sure.

21 **THE COURT:** Rather than just reading, why don't you  
22 tell him what you want to read from.

23 **MR. SPIRO:** Sure. As I said -- and I apologize if he  
24 didn't hear it -- 212, Line 21 to 214, Line 12.

25 **THE COURT:** All right. Any objection on grounds of

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1 completeness?

2 **MR. PORRITT:** Give me a moment, Your Honor.

3 **THE COURT:** Yep. Is that -- do I -- I have that;  
4 right?

5 **MR. SPIRO:** It's the first transcript, Your Honor.

6 **THE COURT:** 212, Line --

7 **MR. SPIRO:** 21, to 214, Line 12.

8 **THE COURT:** All right. Any objection on grounds of  
9 completeness?

10 **MR. PORRITT:** I mean, I don't think it's -- it's so  
11 inconsistent that -- but other than that, I state my objection.

12 **THE COURT:** All right. Objection overruled. You can  
13 read it.

14 **BY MR. SPIRO**

15 **Q** Line 21 (As read):

16 **"QUESTION:** You wrote 'Funding secured.' Do  
17 you see that?

18 **"ANSWER:** Yes.

19 **"QUESTION:** Did you intend for the phrase  
20 'Funding secured' to refer to the commitment  
21 that you understood the PIF to have made at  
22 the July 31st meeting at Tesla?

23 **"ANSWER:** Yes.

24 **"QUESTION:** Is there anything else you were  
25 referring to when you wrote 'Funding

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1           secured'?

2           **"ANSWER:** I had other funding sources in  
3           mind. But I felt like that effectively we  
4           were -- I was subscribed based on the PIF's  
5           desire to take Tesla private alone. Even if  
6           that was the only thing, that, I felt was  
7           strong enough to say 'Funding secured.' But  
8           I was confident there would be many others as  
9           well.

10          **"QUESTION:** Did you consider those other  
11          potential sources of funding to be secured at  
12          the time that you wrote this tweet?

13          **"ANSWER:** Essentially, in my mind, yes.  
14          Something that's absolutely important to know  
15          is the good old" -- oh, excuse me --  
16          "Google Alphabet now has long been interested  
17          in acquiring Tesla and they've always been  
18          interested. Well, at least for the last four  
19          years, maybe five years.

20          **"QUESTION:** So your --

21          **"ANSWER:** It's a standing interest.

22          **"QUESTION:** You were also referencing Google  
23          had an interest in acquiring an interest when  
24          you wrote 'Funding secured'?

25          **"ANSWER:** Yes.

## MUSK - CROSS / SPIRO

1           **"QUESTION:** Did you have any discussions with  
2 anyone at Google in August, 2018, about going  
3 private transaction involving Tesla?

4           **"ANSWER:** No.

5           **"QUESTION:** Anything else that you were  
6 intending to reference when you wrote  
7 'Funding secured'?

8           **"ANSWER:** I always thought that SpaceX, I was  
9 confident that SpaceX could be a significant  
10 participant in this transaction. But from my  
11 standpoint, I thought the Saudis alone were  
12 at least arguably three times  
13 over-subscription on what I thought was  
14 likely necessary to take the company private.  
15 And then you factor in SpaceX, which is space  
16 exploration, factor in Google's interest  
17 acquiring Tesla, this was, I mean, many times  
18 over-subscribed in my mind."

19           Do you remember giving that testimony when the matters at  
20 issue were fresher in your mind?

21   **A**     Yes. Yes.

22   **Q**     Plaintiff's counsel didn't show you that testimony when  
23 they were questioning you, did they?

24   **A**     I mean, they're well aware of that testimony. And I think  
25 they deceptively and knowingly ignored it.

## MUSK - CROSS / SPIRO

1 Q Now, when plaintiff asked you the question, you weren't  
2 asked: Was it the only source -- was PIF the only source of  
3 funding, were you?

4 A I was not.

5 Q Okay. And you know that even though you weren't asked  
6 that, you know that in this case that you're here for, you're  
7 being sued for fraud based on your use of the word "only." Do  
8 you know that?

9 A Yes.

10 Q Even though you believed that you could sell your SpaceX  
11 shares to finance the transaction, was that actually what you  
12 wanted to do?

13 A No. I would have very much hated to sell my SpaceX  
14 shares. That would have broken my heart. But I would have  
15 done it, if need be.

16 Q Did you envision that you needed to?

17 A I did not think it would be necessary.

18 Q When you made the bid to the board, did it give you  
19 comfort in making the bid that you, yourself, had the type of  
20 wealth necessary to make this transaction happen?

21 A Yes.

22 Q Now, was it your hope to take more control or power over  
23 Tesla as a private company?

24 A No.

25 Q Did you intend to push the shareholders out and seize

## MUSK - CROSS / SPIRO

1 power and wealth for yourself?

2 **A** Not at all. I was -- I was trying my best to do the right  
3 thing for the shareholders.

4 **Q** And one more thing about this original proposal to the  
5 board. You see how it says a 30-day limit (As read):

6 "This offer expires in 30 days."

7 **A** Yes.

8 **Q** Were you hoping that the board would get moving here?

9 **A** Yes. I would -- I felt we -- we did not want to have a  
10 protracted discussion. So it needed to be short, and, and that  
11 it either happens or it doesn't happen.

12 But then, if it were protracted for a long period of time,  
13 it would be too much of a distraction for Tesla. So it was --  
14 it should be something that we -- we either get done quickly or  
15 move on. But we -- but a protracted discussion I thought would  
16 be bad for Tesla. It would be too much of a distraction.

17 **MR. SPIRO:** Can we keep this document published for  
18 the jury? I don't know if I asked again.

19 **THE COURT:** I'm sorry, what's that?

20 **MR. SPIRO:** I was just simply asking just to make sure  
21 that the jurors can see the document.

22 **THE COURT:** Okay.

23 **MR. SPIRO:** Is it visible on the screen?

24 (Jurors indicate it is not visible)

25 (Document displayed)

## MUSK - CROSS / SPIRO

1 (Jurors indicate it is visible)

2 **MR. SPIRO:** Okay. Thank you.

3 **BY MR. SPIRO**

4 **Q** So is it possible, when you set a deadline, to extend a  
5 deadline?

6 **A** Yes.

7 **Q** Do you do that all the time?

8 **A** That happens frequently.

9 **Q** There's also a suggestion that, you know, you didn't  
10 consult with financial experts and other folks like that before  
11 deciding on the price that you were comfortable making a bid  
12 at, 420. Okay?

13 **A** Uh-huh.

14 **Q** Did you, as the chief executive officer, have some  
15 familiarity with the value of Tesla?

16 **A** Yes.

17 **Q** Okay. This email has been called previously in this case  
18 horrible names. It's incoherent, incomprehensible, illusory,  
19 false, bad. Was this a real genuine email from you and a real  
20 proposal?

21 **A** Absolutely. And I think it is very clear and to the  
22 point. And I think the reasoning is -- I mean, I think I  
23 articulate the reasoning quite -- very, very clearly here.  
24 That there are three reasons. Those are very good reasons.

25 **Q** Now, I want to --

**MUSK - CROSS / SPIRO**

1           **MR. SPIRO:** We can take that down.

2           (Document taken off display)

3           **BY MR. SPIRO**

4           **Q**     I want to take a step back and talk about how you and the  
5           Kingdom of Saudi Arabia ended up sitting in the factory that  
6           day, July 31st, the day before the August 1st earnings call.

7           **A**     Uh-huh.

8           **MR. SPIRO:** And if we could show the witness  
9           Exhibit 105. I think the Court has ruled that this is  
10          admissible. And I would, with the Court's permission, offer it  
11          into evidence and publish it to the jury.

12          **THE WITNESS:** I'm sorry for squirming around. I have  
13          quite severe back pain.

14          **MR. SPIRO:** If you need to take a break, we can take a  
15          break.

16          **THE WITNESS:** That's okay. I'll do it.

17          **MR. SPIRO:** I have the same thing.

18          **THE COURT:** Do you want to take a break?

19          **THE WITNESS:** Sorry?

20          **MR. SPIRO:** If you need to take a break, or we can do,  
21          you know, a couple minutes more and then --

22          **THE WITNESS:** No, I'll just power through.

23          **MR. SPIRO:** Okay.

24          **THE COURT:** We are coming up probably close to an  
25          appropriate break time anyway, so whenever you want.

**MUSK - CROSS / SPIRO**

1           **MR. SPIRO:** Yeah, so we'll go a few more, if it's okay  
2 with the Court. So with the Court's permission, I'm offering  
3 this, and then we will publish it.

4           **THE COURT:** All right. I've already overruled the  
5 objection to 105. And therefore, it's admissible.

6           **MR. PORRITT:** (Nods head.)

7           **THE COURT:** And you may publish it.  
8 (Trial Exhibit 105 received in evidence.)

9           **MR. SPIRO:** And could we blow that up on the screen.

10 (Document displayed)

11 (Document enlarged)

12           **MR. SPIRO:** Can you move down to the --

13 (Document displayed)

14 **BY MR. SPIRO**

15 **Q** As early as 2016, was Yasir and the PIF approaching you  
16 for meetings?

17 **A** Yes.

18 **Q** Okay.

19           **MR. SPIRO:** And if we could go back to that.

20 (Document displayed)

21           **MR. SPIRO:** What you had on the screen before. Go up  
22 to Mr. Musk's email.

23 (Document displayed)

24 **BY MR. SPIRO**

25 **Q** And as to one of those invitations, you said (As read):

**MUSK - CROSS / SPIRO**

1 "I appreciate the offer, but my obligations  
2 prevent me from traveling to those locations  
3 on those dates."

4 And it ends (As read):

5 "This is not an urgent matter."

6 What did you mean, not urgent? They wanted to meet with  
7 you; you say not urgent. Can you just tell the jury what you  
8 meant?

9 **A** I mean there did not seem to be any urgency to a meeting.  
10 It was not clear why he wanted to meet, I think, at this time.

11 **Q** Exhibit 106. Fast-forwarding to 2017.

12 (Document displayed to the Witness)

13 **MR. SPIRO:** This has also been looked at by the Court.  
14 I think the Court ruled it admissible, and I would offer 106.

15 **THE COURT:** 106 is admitted.

16 (Trial Exhibit 106 received in evidence.)

17 (Document displayed)

18 **BY MR. SPIRO**

19 **Q** And so as you can see here, January, 2017, there's a  
20 confirmation for a meeting at 11:30 a.m. Do you see that?

21 **A** Yes. That was during the creation of OpenAI.

22 **MR. SPIRO:** I want to show the witness 827, March 7,  
23 2017. This exhibit has also been ruled on. I would offer this  
24 into evidence.

25 **THE COURT:** All right, it's admitted.

## MUSK - CROSS / SPIRO

1 (Trial Exhibit 827 received in evidence.)

2 **THE COURT:** You may publish.

3 (Document displayed)

4 **BY MR. SPIRO**

5 **Q** And is this an invitation to the meeting that you  
6 discussed with Larry Ellison?

7 **A** Yes.

8 **Q** And members of SoftBank and the PIF?

9 **A** Yes.

10 **Q** Now, you testified on cross-examination that the topic of  
11 going private and the PIF funding, it had come up through 2017,  
12 into 2018. Is that true?

13 **A** Yes.

14 **Q** Did Tesla's stock price change in 2017 and 2018?

15 **A** Tesla's stock price would go up and down a lot. It went  
16 up and down a lot.

17 **Q** And as Tesla's stock price went up and down, did the PIF  
18 ever waver in speaking to you in their intention and desire to  
19 take Tesla private?

20 **A** No, they were consistent, no matter what the stock price  
21 was.

22 **Q** And did Yasir understand how much money we were talking  
23 about here?

24 **A** I assume he -- a sophisticated investor, that he did.

25 **Q** And did you understand that he, the PIF and the Kingdom of

## MUSK - CROSS / SPIRO

1 Saudi Arabia, had more than enough funding to take Tesla  
2 private?

3 **A** The Saudi PIF is one of the wealthiest organizations...

4 (Document taken off display)

5 **A** I mean, it is the country of Saudi Arabia. They have a  
6 lot of money. To say the least.

7 **Q** In 2017, and into 2018, as these meetings and  
8 conversations were happening, can you tell the jury what you  
9 were working on in terms of Model 3 production, briefly?

10 **A** I mean, that's -- very briefly, is hard. But we were  
11 going through an extremely difficult and painful time to get  
12 the Model 3 to volume production.

13 No company -- no American company has reached volume  
14 production successfully since Chrysler in the '20's. It's been  
15 about 100 years. Many have tried, and they've all failed.

16 **Q** Now, you eventually, the day before the earnings call in  
17 which the Model 3 production -- August 1st -- is discussed, the  
18 day before, you have this meeting inside of Tesla's factory,  
19 the night before the earnings call, that you were asked about  
20 on cross-examination.

21 You were asked -- you mentioned in one of your a man by  
22 the name of Deepak Ahuja. But plaintiff's counsel didn't ask  
23 you who he was. Who is he?

24 **A** Deepak was the chief financial officer of Tesla.

25 **Q** And you mentioned in one of your answers to plaintiff's

## MUSK - CROSS / SPIRO

1 counsel, but he didn't ask who he was -- who is Sam Teller?

2 **A** Sam Teller was my chief of staff.

3 **Q** Okay. And do you know if plaintiffs have called either of  
4 those individuals who were at that meeting with the PIF, to  
5 date, in this trial?

6 **A** I -- I don't know.

7 **Q** Now, when the PIF told you in that meeting -- Yasir,  
8 directly -- that they wanted to take Tesla private, did you  
9 understand that to be buying 5 more percent? Or did you  
10 understand it to meaning a full take-private?

11 **A** I -- I understand that, that there were no conditions -- I  
12 understood that they would do what -- whatever it took. That  
13 there was not -- there was no -- not a limitation.

14 **Q** And if any shareholders rolled -- can you just explain --  
15 you talked a little bit back and forth during cross-examination  
16 about that some shareholders or investors could remain. And I  
17 just want to make sure it's clear to the jury what you mean by  
18 that.

19 What does it mean for a shareholder to roll their shares?

20 **A** They would remain a shareholder with Tesla, private.

21 **Q** So at the time of the going-private transaction, in its  
22 simplest terms, a shareholder could decide to just remain with  
23 the private entity, and then they would own a piece of the  
24 private entity.

25 **A** That's correct.

## MUSK - CROSS / SPIRO

1 Q So if any shareholders rolled, there's less money that you  
2 need from outside investors than if no shareholders roll.

3 Fair?

4 A Yes. Yes.

5 Q Okay. And at this time, did you intend to roll all of  
6 your shares?

7 A Absolutely.

8 Q And did you expect other people who were board members and  
9 investors and long-time investors, investors for decades and  
10 decades, did you expect them to roll their shares?

11 A Absolutely. And it's also worth noting that many of the  
12 shareholders in SpaceX as a private company are also  
13 shareholders in Tesla as a public company. Therefore, it would  
14 be reasonable to assume that companies like Fidelity --  
15 Fidelity is an investor in SpaceX as a private company -- that  
16 Fidelity would continue to be an investor in Tesla as a private  
17 company.

18 Q At the end of the meeting -- and you've described the  
19 events of that meeting -- did you and Yasir shake hands?

20 A Yes.

21 Q Did you take him at his word?

22 A I did.

23 Q Did you have any doubt in your mind, leaving that meeting,  
24 that the Saudi PIF would fund a Tesla go-private?

25 A None, whatsoever. I felt we had a deal, and it was -- we

## MUSK - CROSS / SPIRO

1 had a done deal.

2 **MR. SPIRO:** If we could put up Exhibit 53 and publish  
3 for the jury.

4 (Document displayed)

5 **MR. SPIRO:** And if we can blow up the section that  
6 says -- the "Funding secured" section.

7 (Document displayed)

8 **BY MR. SPIRO**

9 **Q** You had an opportunity to discuss this a little bit on  
10 cross-examination. Is your description of the events that took  
11 place in that room in this blog post accurate?

12 **A** Abso- -- absolutely. Absolutely accurate.

13 **Q** Has your description of the events that happened in that  
14 room some five or so years ago ever wavered at all?

15 **A** Never.

16 **Q** Now --

17 **A** Oh, and if -- if I may reiterate the -- again, when I  
18 first met with Yasir and the Saudi fund, and they wanted to be  
19 part of Tesla, I said: Well, then, then buy 5 percent of Tesla  
20 in the public markets.

21 There was no signed agreement. There was no discussion of  
22 price. And so it would be reasonable to assume that that is --  
23 that is -- that what -- you shake hands on it, and that's --  
24 that's it.

25 **Q** I mean, I -- you've said that a couple of times.

## MUSK - CROSS / SPIRO

1     **A**     Yeah.

2     **Q**     And was it your understanding that, you know, they had put  
3     their money with their mouth was, and that that was as clear a  
4     commitment as there could be, that when they said that you  
5     could count on them in the room on July 31st, you could count  
6     on them?

7     **A**     Ye- --

8             **MR. PORRITT:** Objection, leading, Your Honor.

9             **THE COURT:** Sustained.

10    **BY MR. SPIRO**

11    **Q**     Did you take that statement -- did you -- is the fact that  
12    they invested billions in dollars already, as you've described,  
13    what impact did that on your view of how firm this commitment  
14    was?

15    **A**     It had a very strong impact. I think it -- I know I'm  
16    being repetitive here. But I said: If you're interested in  
17    investing in Tesla, then -- then buy 5 percent in the public  
18    markets.

19             There was no written agreement. There was no discussion  
20    of price. And they went ahead and bought 5 percent of Tesla  
21    stock.

22    **Q**     The next day after you meet with the PIF, the earnings  
23    call, August the 1st, do you invite retail shareholders to  
24    those calls?

25    **A**     Yes.

## MUSK - CROSS / SPIRO

1 Q Is that typical?

2 A No.

3 Q After the earnings call on the 1st, did the stock go up?

4 A I think it might have gone up.

5 Q Okay.

6 MR. SPIRO: And I'm going to just show the witness  
7 Exhibit 83, which I believe is in evidence, and ask that it be  
8 published.

9 THE COURT: All right.

10 (Document displayed)

11 BY MR. SPIRO

12 Q The day after you made the proposal to the board that the  
13 jury has now heard about, you --

14 MR. SPIRO: If we could --

15 BY MR. SPIRO

16 Q You met with the board as a whole on August 3rd, 2018.  
17 And this is only a couple of days after the meeting with the  
18 PIF. Fair?

19 A Yes.

20 Q Okay.

21 MR. SPIRO: If we could blow up the paragraph that  
22 says --

23 (Document enlarged)

24 MR. SPIRO: Okay, that's the minutes of the special  
25 meeting of the board of directors. And can we show the

## MUSK - CROSS / SPIRO

1 attendees for a second?

2 (Document enlarged)

3 **MR. SPIRO:** Okay. All the attendees, maybe not that  
4 blown up.

5 (Document reduced)

6 **MR. SPIRO:** Okay.

7 **BY MR. SPIRO**

8 **Q** And do you see Deepak Ahuja was there?

9 **A** Yes.

10 **Q** And Todd Maron, the general counsel?

11 **A** Yes.

12 **Q** And both vice-presidents of Legal were there?

13 **A** Yes.

14 **Q** You remember questions from plaintiffs suggesting, well,  
15 there were no lawyers anywhere. Were there lawyers at these  
16 board meetings (Indicating)?

17 **A** Yes.

18 **Q** Okay.

19 **A** The -- yes. There were -- all three are very -- they're  
20 world-class lawyers.

21 **Q** Okay.

22 **MR. SPIRO:** And if we can blow up the paragraph  
23 following Mr. Musk's initial remarks.

24 (Document enlarged)

25 **MR. SPIRO:** Okay.

**MUSK - CROSS / SPIRO**

1 **BY MR. SPIRO**

2 **Q** And it says (As read):

3 "During such discussion, Mr. Musk noted that  
4 he would like to structure a private company  
5 similar to SpaceX's corporate structure,  
6 where smaller shareholders could invest  
7 through a type of special purpose fund."

8 Did you say that to the board?

9 **A** Yes.

10 **Q** And if we can skip a sentence and go to the next sentence  
11 (As read):

12 "As for the funding of a possible  
13 going-private transaction, Mr. Musk noted  
14 that in his discussions with the Public  
15 Investment Fund of Saudi Arabia, the PIF  
16 indicated that it was willing to fund the  
17 entire going-private transaction."

18 **A** Yes.

19 **Q** Okay. And Mr. Ahuja was in that board meeting with you.  
20 Right?

21 **A** Yes.

22 **Q** I don't have --

23 **MR. SPIRO:** We can take a break now, Your Honor, or we  
24 can continue.

25 **THE WITNESS:** May I add something? Maybe it's not

## MUSK - CROSS / SPIRO

1 important, but --

2 **THE COURT:** All right, let's take a break. Yeah.  
3 Break for 20 minutes. Thank you.

4 **THE COURTROOM DEPUTY:** All rise for the jury.  
5 (Jury excused)

6 (The following proceedings were held outside of the  
7 presence of the Jury)

8 **THE COURT:** All right. See you in 20.  
9 (Recess taken from 1:19 p.m. to 1:37 p.m.)

10 (The following proceedings were held outside of the  
11 presence of the Jury)

12 **THE COURTROOM DEPUTY:** Please remain seated, court is  
13 back in session.

14 **THE COURT:** All right. Let's call the jury back. And  
15 we'll have Mr. Musk resume the stand. We only have about 25  
16 minutes for the rest of the day.

17 **MR. SPIRO:** Yeah. I always ask in every courtroom in  
18 every place, but I assume...

19 (Reporter clarification)

20 (Off-the-Record discussion)

21 (The following proceedings were held in the presence of  
22 the Jury)

23 **THE COURTROOM DEPUTY:** All rise for the jury.

24 **THE COURT:** All right. Have a seat, everyone. Thank  
25 you. We're going to recall Mr. Musk back to the stand.

**MUSK - CROSS / SPIRO**

1 Is he -- why don't you check.

2 (A pause in the proceedings)

3 (The Witness retakes the witness stand)

4 **THE COURT:** All right. Mr. Spiro, you may proceed.

5 **MR. SPIRO:** Thank you, Your Honor.

6 **CROSS-EXAMINATION RESUMED**

7 **BY MR. SPIRO**

8 **Q** Mr. Musk, we have spoken now and you have spoken on cross  
9 about the meetings with the PIF and the conversations and  
10 lead-up to July 31st, okay, conversations with the PIF. The  
11 offer to the board of August the 2nd. We looked at the board  
12 minutes from you speaking to the board with Deepak Ahuja on the  
13 3rd of August. And we have put up the blog post, which is  
14 Exhibit 53.

15 And you've testified that you spoke to Michael Dell.

16 **A** Yes.

17 (Document displayed)

18 **Q** I don't think you were asked this, but you -- did you  
19 speak to Michael Dell's lawyer?

20 **A** Yes.

21 **Q** You spoke to Egon Durban?

22 **A** Yes.

23 **Q** And all of this happened, everything we're describing,  
24 before the tweets on the 7th. Fair?

25 **A** That is correct.

## MUSK - CROSS / SPIRO

1 Q Okay. Was everything that you said in all of those  
2 different contexts, to all of those different people,  
3 consistent with each other?

4 A I believe it was extremely consistent.

5 Q Okay. Did any of those people, groups, tell you that what  
6 you were contemplating, what you were considering, was not  
7 possible?

8 A The -- the absolute total opposite. They're -- they --  
9 they were -- it could absolutely be done.

10 And, um, and in speaking to Michael Dell, I wanted to ask  
11 him if he thought taking Michael -- taking Dell Computer  
12 private was a good idea, whether he regretted that or not. And  
13 he said it was -- he felt very strongly that it was a good  
14 idea, that he does not regret taking Dell Computer private.  
15 And it enabled him to execute -- you know, to operate the  
16 company much more efficiently. And he strongly recommended  
17 that I try to take Tesla private.

18 Q And now I'm going to show you the blog post of August  
19 13th, which, of course, happens -- if I wasn't afraid of that  
20 easel (Indicating) I would show the calendar again, but  
21 obviously the 13th is after the 7th, so now we're at a time  
22 after the tweets. Okay?

23 And just to orient the jury, you're not being sued for  
24 fraud based on the blog post. Okay? And I want to show you  
25 this line on the blog post.

## MUSK - CROSS / SPIRO

1           **MR. SPIRO:** Okay. If we could highlight the bottom of  
2 Exhibit 53.

3           (Document highlighted)

4           **MR. SPIRO:** And can we publish to the jury?

5           (Document displayed)

6 **BY MR. SPIRO**

7 **Q** Okay. And was the blog post also consistent with all  
8 those other meetings and discussions you have already testified  
9 about?

10 **A** Yes.

11 **Q** Okay. And was the blog post accurate?

12 **A** Yes.

13 **Q** (As read)

14           "I left the July 31st meeting with no  
15 question that a deal with the Saudi sovereign  
16 fund could be closed, and it was just a  
17 matter of getting the process moving. This  
18 is why I referred to 'funding secured' in the  
19 August 7th announcement."

20           Was that truthful?

21 **A** Yes.

22 **Q** Now, going back in time to the days right before the  
23 tweet, okay, can you explain to the jury what the issue of  
24 selective disclosure is that you discussed with the board and  
25 the lawyers?

## MUSK - CROSS / SPIRO

1     **A**     Yes. It's important that all investors have the same  
2     information when making a buying or selling decision, and  
3     that's so that there's not some investors who have an advantage  
4     over other investors. And this is often a problem with --  
5     where -- where sometimes large investors have more information  
6     than small investors.

7             But I wanted to make sure that all investors, small and  
8     large, had the same information.

9     **Q**     And at the board meeting on August 3rd, did you remain --  
10    did you leave that meeting with concerns about how you would  
11    accomplish navigating this selective disclosure issue?

12    **A**     Yes. I mean, I was trying to figure out how can I -- how  
13    can I ensure that everyone knows it at the same time. And  
14    Twitter seemed to be the best way to do that.

15    **Q**     Now, when you spoke to -- you've already testified you  
16    spoke to Egon Durban the night of the 6th, August 6th, before  
17    the morning of the 7th; later in the day the tweet goes. Okay?

18             Now, did you have a plan to -- I think you've already  
19    testified to this -- meet with Mr. Durban after the 7th --  
20    August 10th, to have a follow-up meeting?

21    **A**     Yes.

22    **Q**     Okay. So on the 7th of August, had you in your mind  
23    already decided on the 6th that you were going to announce your  
24    considerations to the world on the 7th? Or did you not have a  
25    date in mind yet? Do you understand my question?

## MUSK - CROSS / SPIRO

1     **A**     I'm not sure I fully understand your question.

2     **Q**     What I'm asking is: Had you planned before you woke up on  
3     the morning of the 7th --

4     **A**     Oh, no. I had not planned to, no.

5     **Q**     Had you planned to at some point, sooner than later,  
6     announce your considerations to the world at large?

7     **A**     Yes.

8     **Q**     Okay. Now, you know, you testified that you woke up in  
9     L.A. You -- did you live in Los Angeles at the time?

10    **A**     I did.

11    **Q**     Okay. And as I said before, plaintiff's' counsel called  
12    you in their case, so you didn't really get to be -- you just  
13    were cross-examined. The jury didn't get to hear anything  
14    about you, Mr. Musk.

15    **A**     Yes.

16    **Q**     Where are you from?

17    **A**     Um, I was born in South Africa.

18    **Q**     And what was your childhood like?

19    **A**     Not good.

20    **Q**     Okay. Did there come a point in time -- well, can you --  
21    can you -- can you explain what you mean by "Not good" in sort  
22    of brief terms?

23            **MR. PORRITT:** Objection, Your Honor, to the relevance  
24    of this.

25            **THE COURT:** Well, are you going to put on your -- are

**MUSK - CROSS / SPIRO**

1 you going to call this witness in your case --

2 **MR. SPIRO:** No.

3 **THE COURT:** -- in chief?

4 **MR. SPIRO:** No. Mr. Musk's here. He's already --  
5 he'll be going to his third --

6 **THE COURT:** All right. It goes to credibility. I'll  
7 allow some.

8 **MR. SPIRO:** It's just a few -- it's just going to be a  
9 few questions, Your Honor.

10 **BY MR. SPIRO**

11 **Q** But, can you just sort of, in a sentence or two, just  
12 explain what you meant?

13 **A** I'm -- I am -- I'm not sure what -- I don't think -- I  
14 don't think a few -- I don't think a few sentences would  
15 describe it.

16 **Q** Okay. So I take it you had -- you did not -- you don't  
17 have fond memories of that -- that time.

18 Did there come a point in time when you immigrated to the  
19 United States?

20 **A** Yes.

21 **Q** And --

22 **A** Right.

23 **Q** -- how old were you?

24 **A** Seventeen.

25 **Q** And can you just describe what that was like.

## MUSK - CROSS / SPIRO

1     **A**     Um, well, actually, I was able to go to Canada because my  
2     mother was born in Canada, and so I was able to get a Canadian  
3     passport. And then three weeks after the Canadian passport, I  
4     left. I would have left sooner, but it took three weeks to get  
5     the affordable ticket.

6     **Q**     Okay. When you came here, Mr. Musk, did you have, you  
7     know, a lot of money?

8     **A**     No.

9     **Q**     Why did you come to the United States?

10    **A**     It is where great things are possible.

11    **Q**     Did you go to school?

12    **A**     Yeah, yes. I went to -- yes.

13    **Q**     Okay. And after you went to school, can you tell me sort  
14    of how you started your career.

15    **A**     Um, sure. Well, I am -- I worked -- worked my way through  
16    college. And I graduated -- I had a lot of student debt. Um,  
17    I had like \$100,000 in debt, and \$3,000 in cash and a computer.  
18    And I started writing internet software in 1995.

19           Most people had not heard of the internet. And I -- most  
20    people don't know but I -- I wrote the first maps and  
21    directions and white pages and yellow pages on the internet in  
22    '95, by myself. And then we got -- then my brother joined, and  
23    another friend joined.

24           And then we, um, were lucky enough to get venture funding  
25    in early '96.

## MUSK - CROSS / SPIRO

1 Q And what company was that?

2 A It was called Zip2.

3 Q And just in a sentence, can you just tell the jury what  
4 that company did?

5 A Yeah. I mean, it was very early in the internet days,  
6 but, um, the first products, like I said, were maps and  
7 directions, white pages, yellow pages.

8 Kind of like an early, early version of Google Maps and  
9 Directions. I mean, I could go on, --

10 Q Well --

11 A -- but we're -- I should say we also wrote the software  
12 that allowed or enabled hundreds of newspapers to come -- go  
13 online and publish online. And we -- we wrote part of the *New*  
14 *York Times* initial website, and a lot of other things.

15 Q Did you go on to start other companies?

16 A Um, yes. I was a co-founder of X.com, which became  
17 PayPal. Which, I think some people may have used that.

18 Q And what other companies, as you fast-forward in your  
19 life, you know, have you been intricately involved either as a  
20 founder or as an early member of? Can you just sort of list  
21 off those companies?

22 A SpaceX, Tesla, Neuralink, Boring Company, OpenAI.

23 Q And they've -- the jury's heard about some of these  
24 companies, but just again, in a sentence, if you can, what does  
25 Neuralink do?

## MUSK - CROSS / SPIRO

1     **A**     Neuralink is making brain-computer interfaces to enable  
2     people to walk again, so -- and cure other -- anything that  
3     involves like a brain or a spinal cord injury. So it would --  
4     our first two applications will be restoring sight, and  
5     restoring mobility to people who cannot walk.

6     **Q**     The other companies -- OpenAI deals with artificial  
7     intelligence. Boring is -- deals with tunneling so that cities  
8     can function? Is that a fair description?

9     **A**     Yeah. The Boring Company is trying to help solve the  
10    problem of traffic, by making it affordable to build road  
11    tunnels under cities. It's trying to solve traffic, is a way  
12    to think of it.

13   **Q**     So about these various businesses and ventures that we're  
14    here discussing, you know, there was a witness that sort of  
15    came in and said that this transaction that you were  
16    considering at the time of August the 7th was somewhat  
17    unprecedented.

18           Mr. Musk, have you done things in your life and in your  
19    career that are in some ways, fair to say, unprecedented?

20   **A**     Yes. I've done quite a few things that are -- that are  
21    unprecedented. And, um, yes, where I've been told many times  
22    that it was impossible, and, yeah. It -- yeah. Um, I mean, in  
23    the beginning of -- yeah. I mean, at the beginning of Tesla,  
24    they said: You can't make a compelling electric car. And even  
25    if you did, no one would buy it. And that was the unanimous

## MUSK - CROSS / SPIRO

1 view of the automotive industry.

2 Q Um --

3 A I was called a fool many times.

4 Q The other thing that's been said by the lead plaintiff in  
5 this case is that you have demonstrated an ability to raise  
6 money. Okay?

7 A Yes.

8 Q Across all of these companies that you have described, can  
9 you explain to the jury approximately how many financing rounds  
10 you have done?

11 A At this point -- at this point I've done over a hundred  
12 financing rounds. I think I've raised more money than anyone  
13 in history at this point, by a significant margin. I should  
14 say the -- but, you know, the reason I'm able to raise money  
15 easily is because investors trust me to be truthful and  
16 responsible with their money.

17 And, um, the -- you know, one of the first venture  
18 capitalists I ever meet was Steve Jurvetson, in January of '96,  
19 when he was at Draper Fisher Jurvetson. Well, it wasn't even  
20 called -- it was called -- he was just a junior partner. It  
21 was called Draper Fisher. And he actually turned me down. But  
22 then, subsequently has invested in all of my companies.

23 And the reason for that is that it -- in that entire time,  
24 I have always been truthful, and I have always taken care of  
25 investors. That is why.

## PROCEEDINGS

1 Q And over the course of that time, can you just estimate to  
2 the jury how much money you've been able to raise?

3 A I mean, at this point, it must be approaching  
4 \$100 billion.

5 Q And you used the word "subscribed" in some of these  
6 messages the jury has seen. Or, have you ever had a round  
7 which is -- a financing round where you go to raise money and  
8 it not be over-subscribed?

9 A No. I don't -- I don't believe so. I've also never lost  
10 money for investors in that entire time.

11 Q Is there an expression called a "down round"? Have you  
12 ever had a down round?

13 A No.

14 Q Ultimately, Mr. Musk, on August 7th, 2018, did you think  
15 funding would be an issue in connection with the going private?

16 A Definitely not.

17 MR. SPIRO: Given the time, Your Honor?

18 THE COURT: All right. We're going -- we have reached  
19 the 2:00 hour, so we'll go ahead and take our break for today.  
20 We'll resume tomorrow morning at 8:30.

21 The usual admonition: Please do not do any research, do  
22 not discuss with anybody anything about this case, do not read  
23 anything, do not listen to anything about this case, any  
24 coverage. And do not form any opinions until this case is  
25 submitted to you for deliberation.

## PROCEEDINGS

1 We'll see you tomorrow morning. Thank you.

2 **THE COURTROOM DEPUTY:** All rise for the jury.

3 (Jury excused)

4 (The following proceedings were held outside of the  
5 presence of the Jury)

6 **THE COURT:** All right. So we'll adjourn until  
7 tomorrow morning.

8 I've now ruled on, I think, enough exhibits that it will  
9 get us through tomorrow, I believe, without having to venture  
10 deeper. I'm looking at these as they come in, so I'll deal  
11 with those in time.

12 **MR. PORRITT:** Very good, Your Honor. Yeah, I think  
13 it's going a bit smoother, I think. May be faint praise,  
14 but --

15 **THE COURT:** Well, you may say that, but I'm still  
16 staying up late. But, yes, I appreciate the effort. See you  
17 tomorrow.

18 **MR. PORRITT:** Thank you, Your Honor.

19 (Off-the-Record discussion)

20 **THE COURTROOM DEPUTY:** Court is adjourned.  
21  
22  
23  
24  
25

I N D E X

Monday, January 23, 2023 - Volume 4

PLAINTIFF'S WITNESSESPAGE VOL.MUSK, ELON (RECALLED)

(PREVIOUSLY SWORN)

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Direct Examination Resumed by Mr. Porritt

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Cross-Examination by Mr. Spiro

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**CERTIFICATE OF REPORTER**

I, BELLE BALL, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.



\_\_\_\_\_  
/s/ Belle Ball

Belle Ball, CSR 8785, CRR, RDR

Monday, January 23, 2023